



this is our homeland

a collection of essays on the betrayal of adivasi rights in India

*This is our homeland.
Our homeland belongs to our people.
There was no need to prove this
with a legal title of ownership of the lands,
and it was not challenged then.
That this is our homeland
was acknowledged then.*

Extract from a poem by **Boddan**, an activist for tribal land rights in Tamil Nadu and Kerala,
resident of Thuvaipathy village, Coimbatore District, Tamil Nadu



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EQUATIONS July 2007**

The title of this dossier has been inspired from a poem by Boddan, an activist for tribal land rights in Tamil Nadu and Kerala. (All India Coordinating Forum of the Adivasis / Indigenous Peoples, Voices of the Adivasis / Indigenous people of India, Other Media Communications, New Delhi, 2001)

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preface

Challenges and possibilities...

"Indigenous peoples around the world have sought recognition of their identities, their ways of life and their right to traditional lands, territories and natural resources; yet throughout history, their rights have been violated." United Nations Permanent Forum on Indigenous Issues (UNFPII), October 2006.

In the sixty years as an independent nation, India has achieved significant milestones in the areas of economic growth, cultural assimilation and global political interests. With the current GDP growth rate at 9.2%, India is the second fastest-growing major economy in the world. India characterizes a rich diversity with more than 2000 ethnic groups and four major families of languages. However, the increasing economic growth has not reduced the challenges of the state as far as poverty, exclusion, violence and socio-demographic indices are concerned, and have perhaps been in some ways, a contributing factor. There have been numerous legislations and constitutional provisions to respond to socio-economic-political and cultural disparity and exclusion but much of these efforts have not translated into effective implementation on the ground. At a time when the nation proudly commemorates 150 years of struggle for independence it has failed to recognise that for millions of adivasis and nomads the struggle for freedom and the right to live still continues.

This collection is an attempt to weave together various experiences and struggles documented by people & groups engaged in responding to the situation of indigenous/tribal communities in India. While the compilation covers a range of issues, challenges and possibilities, it is organised in broad areas - the debates around the history and future of

adivasi communities, the role of the state, the role of industrialised development and private profit, and the landscape of legislation around adivasi rights. While these are not watertight compartments, each of them has a story to tell and a perspective on how the otherwise rich socio-cultural existence of indigenous/ tribal communities has been systematically reduced to nothingness in the race for growth, development and conservation of natural resources.

The tribal districts of Chhattisgarh, Orissa, Jharkhand, Andhra Pradesh, Karnataka, and Maharashtra are destination of billions of dollars of promised investments, mostly in steel and iron plants, and mining projects. This investment will require huge amount of lands, forested, rich with mineral resources (80 % of India's minerals and 70 % of forests are within tribal areas) crucial for the survival of tribal people. Adivasi homelands have become the cradle of heavy industries, which have in turn displaced hundreds of thousands of adivasis. Others have been relegated to unorganized and unskilled sectors of wage labour.

The Land Acquisition Act, 1894, an instrument of British colonialism, is still being used to legally take over adivasi lands in the name of "national development" and "national interest". The Indian Forest Act, 1927, which became the main legal instrument for depriving the adivasis of their forest rights, still continues to be the basic Indian law on forests. In the name of environmental protection, the Wild Life Protection Act, 1972, was also promulgated. This Act severely restricts the rights of adivasis in the wildlife sanctuaries and extinguishes all rights in the case of national parks. Growing efforts to carry out eco-development projects, and promote eco-tourism, with the financial backing of multinational agencies like the World Bank, have heightened the crisis, with adivasis having to further restrict or abandon their survival activities in the forests.

Where the potential of beneficial legislation like PESA Panchayats (Extension to Scheduled Areas) Act 1996 came in, it has been disregarded or largely rendered toothless. With the passing of the recent Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, and the process of formulation of rules ongoing, the hope that the Indian state will set right a historical injustice, remains to be seen. As we go into press we have news that new mining policy is likely to be tabled in the coming session of parliament that will exploit further fresh mineral reserves and increase foreign direct investment in the sector.

It is thus that the adivasi peoples struggle for autonomy, for control over their territories and for the restoration of their traditional rights continues. The reaction of central and state government to the adivasi struggles has been brutal. The state has resorted to extreme measures – extrajudicial killings, placing areas under special measures, sending in battalions

of paramilitary forces and police who have let loose reigns of terror to keep the people under state control.

As part of the project on documenting the struggles of forest dwellers and nomadic tribes, which was done through the making of a film **Mahua Memoirs**, this collection of essays, cases and articles, and an exhibition titled **"disappear"**. We gratefully acknowledge Vinod Raja and Ashok Maridas and their team of Grass Roots media, the filmmakers whose passionate engagement with the issue helped us to also engage as part of the networking and research team and learn enormously as we went along. We also gratefully acknowledge the active support of HIVOS India Regional Office and particularly Biswadeep and Rajendran Nathan whose encouragement, suggestions and understanding helped us through many challenges and difficulties.

We are grateful to all those who contributed – their contribution reflects a lifetime of struggle of each of them as individuals and that of the communities, movements, networks and organisations they belong to and struggle with. It is a privilege and honour to have them write for this collection. While the situation the adivasis face is stark and bleak, we are inspired by their indomitable spirit and determination to fight for values and principles that go beyond their own benefit – but benefit all of us as humankind – democracy, community, respect for nature and life, sustainability, truth, and simplicity. In an increasingly selfish and materialistic world, these are indeed rare battles.

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July 2007

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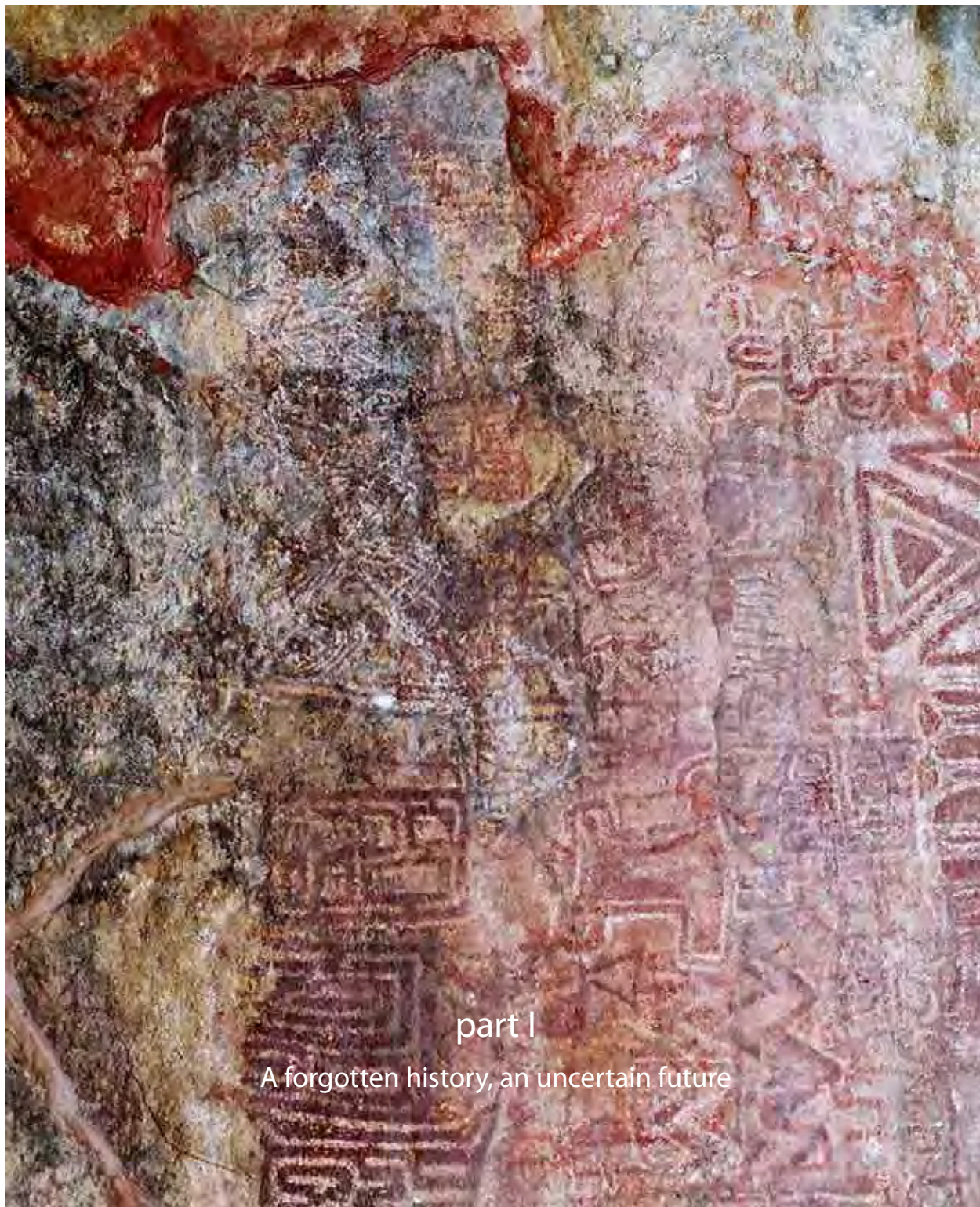
abbreviations

ADB	Asian Development Bank
AJSU	All Jharkhand Student Union
AP LTR	Andhra Pradesh Land Transfer Regulation Act, 1959
APMDC	Andhra Pradesh Mineral Development Corporation
BPL	Below Poverty Line
CBI	Central Bureau of Investigation
CCL	Central Coalfields Limited
CEC	Central Empowered Committee
CFG	Community Forest Governance
CPI	Communist Party of India
CPI (M)	Communist Party of India (Marxist)
CPR	Common Property Resource
CRPF	Central Reserve Police Force
CSD	Campaign for Survival and Dignity
CT	Criminal Tribe
CUS	Chhotanagpur Unnati Samaj
DFID	Department for International Development
DNT	Denotified and Nomadic Tribes
EIA	Environment Impact Assessment
FDI	Foreign Direct Investment
FIMI	Federation of Indian Mineral Industries
GoI	Government of India
ha	Hectares
HPCL	Hindustan Petroleum Corporation Limited
HOA	Habitual Offenders Act
IGF	Inspector General of Forests
IMF	International Monetary Fund
IPC	Indian Penal Code

ITDA	Integrated Tribal Development Agencies
JCC	Jharkhand Coordination Committee
JFM	Joint Forest Management
JMM	Jharkhand Mukti Morcha
JSPL	Jindal Steel and Power Limited
KNP	Kudremukh National Park
MFP	Minor Forest Produce
MM (RD)	Mines and Minerals (Development & Regulation) Act, 1957
MNCs	Multi National Companies
MoEF	Ministry of Environment and Forests
MoRD	Ministry of Rural Development
MoT	Ministry of Tourism
MoU	Memorandum of Understanding
MP	Member of Parliament
NALCO	National Aluminium Company Limited
NBR	Nilgiris Biosphere Reserve
NDA	National Democratic Alliance
NHRC	National Human Rights Commission
NOC	No Objection Certificate
NSS	National Sample Survey
NST	Nagarika Seva Trust
NTP	National Tourism Policy
OBC	Other Backward Castes
PCCF	Principal Chief Conservator of Forests
PESA	Panchayats (Extension to the Scheduled Areas) Act 1996
PF	Protected Forests
PIL	Public Interest Litigation
PPFs	Private Protected Forests
PRIs	Panchayati Raj Institutions
RF	Reserve Forest
SC	Scheduled Caste
SIU	Sponge Iron Units
ST	Scheduled Tribe
TAC	Tribes Advisory Committee
TISCO	Tata Iron and Steel Company
UAIL	Utkal Alumina International Limited

*We dream of our land.
Everything that we see, we walk on,
we feel through our body,
belongs to our land.
We need the land to think about ourselves,
to know who we are.
We are no people without our land.
The government should understand this.
This is not negotiable.
Land cannot be compensated.*

Gregory Bahla, Bondabahal, Orissa



part I

A forgotten history, an uncertain future

This 5600 yr old rock art is in the Karmagadh Reserve Forest, Raigadh District, Chhattisgarh. Not far from here, the people of Singhanpur are battling to save their ancient rock-art heritage from destruction due to the proximity of the Monet Steel Plant. There is news of further expansion of the plant as we go into press.



Adivasis of India

A history of discrimination, conflict and resistance

C R Bijoy

The 84.32 million people belonging to 'Schedule Tribes' in India are generally considered to be adivasis, literally meaning 'indigenous people' or 'original inhabitants', though the term Schedule Tribes (STs) is not coterminous with adivasis. ST is an administrative term used for the purposes of 'administering' certain specific constitutional privileges, and for the protection and benefits of specific sections of peoples considered historically disadvantaged and 'backward'. However, this administrative term does not lexically include all adivasis. Out of the 5653 distinct communities in India, 635 are considered to be 'tribes' or adivasis. In comparison, one finds that the estimated number of STs varies from 250 to 593. For practical purposes, the United Nations and other multilateral agencies generally consider the STs as 'indigenous peoples'. With the ST population making up 8.2% (as of 2001) of the total population of India, it is the nation with the highest concentration of 'indigenous peoples' in the world!

The Constitution of India, which came into existence on 26 January 1950, prohibits discrimination on grounds of religion, race, caste, sex or place of birth (Article 15) and it provides the right to equality (Article 14), to freedom of religion (Articles 25–28) and to culture and education (Articles 29–30). STs are supposedly addressed by as many as 209 Articles and 2 special schedules of the Constitution—Articles and special schedules that are protective and paternalistic. Articles 341 and 342 provide for classification of Scheduled Castes (SCs, the untouchable lower castes) and STs, while Articles 330, 332 and 334 provide for reservation of seats in Parliament and assemblies. For purposes of specific focus on the development of STs, the government has adopted a package of programmes, which is administered in specific geographical areas with considerable ST population, and it covers 69% of the tribal population.

Despite this, and after the largest 'modern democracy' of the world has existed for more than half a century, the struggles for survival of adivasis – for livelihoods and existence as peoples – have today intensified and spread as never before in history.

Over centuries, the adivasis have evolved an intricate convivial-custodial mode of living. Adivasis belong to their immediate surroundings, which are the essence of their existence; the abode of the spirits and their dead; and the source of their science, technology, way of life, their religion and culture. Back in history, the adivasis were in effect self-governing 'first nations'. In general and in most parts of the pre-colonial period, they were notionally part of the 'unknown frontier' of the respective states where the rule of the reign in fact did not extend. The adivasis always governed themselves outside of the influence of the particular ruler.

The introduction of the alien concept of private property began with the permanent settlement of the British in 1793 and the establishment of the zamindari system that was conferred control over vast territories; adivasi territories were designated to feudal lords for the purpose of revenue collection by the British. This drastically commended the forced restructuring of the relationship between adivasis and others. The predominant external caste-based religion sanctioned and practiced a rigid and highly discriminatory hierarchical ordering with a strong cultural mooring. This became the cultural basis for the altered perception of adivasis by others in determining the social and, hence, the economic and political space in the emerging larger society that is the Indian diaspora. Relegating the adivasis to the lowest rung in the social ladder was but natural and formed the basis of social and political decision-making by the largely upper-caste-controlled mainstream. Ancient Indian scriptures, scripted by the upper castes, all too well provided legitimacy to further this.



Indian epics and adivasis

In Asia, migration has been going on for more than fifty thousand years. The subjugated people have been relegated to low status and isolation, instead of either being eliminated or absorbed. Entry of Europeans and subsequent colonisation of Asia transformed the relationship between the mainstream communities and tribal communities of this region. Introduction of capitalism, private property and the creation of a countrywide market broke the traditional economy based on use-value and hereditary professions.

All tribal communities are not alike. They are products of multiple historical and social conditions. They belong to four different language families, and several different racial stocks and religious moulds. They have kept themselves apart from feudal states and brahminical hierarchies for thousands of years. In Indian epics, such as the Ramayana, the Mahabharata and the Puranas, there are many references to interactions and wars between the forest or hill tribes and the Hindus.

Eminent historians who have done detailed research on the Ramayana (200 BC to 500 BC) have concluded that 'Lanka', the kingdom of the demonic king Ravana and 'Kishkinda', the homeland of the vanaras (depicted as monkeys) were places situated south of Chitrakuta hill and north of Narmada river in middle India. Accordingly, Ravana and his demons were an aboriginal tribe, most probably the Gond, and the Vanaras, like Hanuman in the epic, belonged to the Savara and Korku tribes whose descendants still inhabit the central Indian forest belt. Even today, the Gond holds Ravana, the villain of the Ramayana, in high esteem as a chief. Rama, the hero in the epic, is also known for slaughtering the Rakshasas (demons) in the forests!

The Mahabharata refers to the death of Krishna at the hands of a Bhil Jaratha. In the ancient scriptures, considered to be sacred by the upper castes, various terms are used depicting adivasis as almost non-humans. The epics of the Ramayana, the Mahabharata, the Puranas, Samhitas, and other so-called sacred books refer to adivasis as Rakshasha (demons), Vanara (monkeys), Jambuvan (boar men), Naga (serpents), Bhushundi Kaka (crow), Garuda (king of eagles), etc. In medieval India, they were called derogatorily as Kolla, Villa, Kirata, Nishada, and those who surrendered or were subjugated were termed as Dasa (slave) and those who refused to accept the bondage of slavery were termed as Dasyu (a hostile robber).

In the Mahabharata, Eklavya, one of their archers, was so talented that the hero of the Aryans, Arjuna could not stand before him. So, they assaulted him, cut his thumb and destroyed his ability to fight, and then fashioned a story in which he accepted Drona as his Guru and surrendered his thumb as an offering to the master! The renowned writer Mahashweta Devi points out that the adivasi predated Hinduism and Aryanism, that Siva was not an Aryan God and that, in the 8th century, the tribal forest goddess or harvest goddess was absorbed and adapted as Siva's wife. Goddess Kali, the goddess of hunters, has definitely had a tribal origin.



History of the adivasis

Little is known about the relationship between the adivasis and non-advaisi communities during the Hindu and Muslim rules. There are stray references to wars and alliances between the Rajput kings and tribal chieftains in middle India and in the North-East between the Ahom Kings of Brahmaputra valley and the hill Nagas. They are considered to be *atimdra* meaning lower than the untouchable castes. Even today, the upper-caste people refer to these peoples as *jangli*, a derogatory term meaning 'those who are like wild animals', uncivilized or sub-humans.

The adivasis have few food taboos, rather have fluid cultural practices and minimal occupational specialisation; while, on the other hand, the mainstream population of the plains have extensive food taboos, rigid cultural practices and considerable caste-based occupational specialisation. In the Hindu caste system, the adivasis have no place. The so-called mainstream society of India has evolved as an agglomeration of thousands of small-scale social groups whose identities within the larger society are preserved by not allowing them to marry outside their social groups. The subjugated people were classified in such caste groups who were forced to perform less desirable menial jobs like sweeping, cleaning of excreta, removal of dead bodies, leather works, and so on—the untouchables.

Some of the earliest small-scale societies dependent on hunting and gathering, and traditional agriculture, seem to have remained outside this process of agglomeration. These are the adivasis of present day. Their autonomous existence outside the mainstream led to the preservation of their socio-religious and cultural practices, most of them also retaining their distinctive languages. Widow-burning, enslavement, occupational differentiation, hierarchical social ordering, etc., are generally not part of their practices. Though there was trade between the adivasis and the mainstream society, any form of social intercourse was discouraged. Caste India did not consciously attempt to draw them into the orbit of caste society. But, in the process of economic, cultural and ecological change, adivasis have attached themselves to caste groups in a peripheral manner, and there is a continuous process of de-tribalisation.

Many of the Hindu communities have absorbed the cultural practices of the adivasis. Although Hinduism could be seen as one unifying thread running through the country as a whole, it is not homogenous but, in reality, a conglomeration of century-old traditions, shaped by several religious and social practices that are more cultural in their essence (which also include elements of adivasi socio-religious culture).



Adivasis at the lowest rung of the ladder

Adivasis are not, as a general rule, regarded as unclean by caste Hindus as they look upon the Dalits. But, adivasis continue to face prejudice (as lesser humans); they are socially distanced and often face violence from society. They are at the lowest point in every socio-economic indicator. Today, majority of caste Hindus regards them as primitive and aim at decimating them as a people; or at best integrating them with the mainstream, placing them at the lowest rung in the ladder. More so with the rise of the fascist Hindutva forces.

None of the adivasi fights against the British have been treated as part of the 'national' struggle for independence. From the Malpahariya uprising in 1772 to Lakshman Naik's revolt in Orissa in 1942, the adivasis repeatedly rebelled against the British in the north-eastern, eastern and central Indian belt. In many of the rebellions, the adivasis could not be subdued, but terminated the struggle only because the British acceded to their immediate demands, as in the case of the Bhil revolt of 1809 and the Naik revolt of 1838 in Gujarat. Heroes like Birsa Munda, Kanhu Santhal, Khazya Naik, Tantya Bhil, Lakshman Naik, Kuvar Vasava, Rupa Naik, Thamal Dora, Ambul Reddi, Thalakkal Chandu and many more are remembered in the songs and stories of the adivasis but ignored in the official text books.

The British Crown's dominions in India consisted of four political arrangements: (1) the Presidency areas where the Crown was supreme, (2) the Residency areas where the Crown was present through the Resident and the ruler of the realm were subservient to the Crown, (3) the Agency (tribal) areas where the agent governed in the name of the Crown but left the local self-governing institutions untouched, and (4) the Excluded areas (north-east) where the representatives of the Crown were a figure head.

After the transfer of power, the rulers of the Residency areas signed the 'Deed of Accession' on behalf of the ruled for which they were offered privy purses. No deed was, however, signed with most of the independent adivasi states. They were assumed to have joined the Union. The government rode rough shod on independent adivasi nations and they were merged with the Indian Union. This happened even by means of state violence as in the case of the adivasi uprising in the Nizam's state of Hyderabad and in Nagalim. While this aspect did not enter the consciousness of the adivasis at large in the central part of India where they were occupied with their own survival, the picture was different in the north-east because of the historic and material conditions. Historically the north-east was never a part of mainland India. The colonial incorporation of north-east took place much later than the rest of the Indian subcontinent. While Assam ruled by the Ahoms came under the

control of British in 1826, neighbouring Bengal was annexed in 1765. Garo hills were annexed in 1873, Naga hills in 1879 and Mizoram under the ChinLushai expeditions during 1881–90. Consequently, the struggles for self determination took various forms—independence to greater autonomy.



A process of marginalisation

Today, the total forest cover in India is reported to be 765,210 km² of which 71% is adivasi areas. Of these, 416,520 and 223,300 km² are categorised as reserved and protected forests, respectively. About 23% of these are further declared as wildlife sanctuaries and national parks, which alone has displaced some half-a-million adivasis. By the process of colonisation of the forests that began formally with the Forest Act of 1864 and finally the Indian Forest Act of 1927, the rights of adivasis were reduced to mere privileges conferred by the state. This was in acknowledgement of their dependence on the forests for survival and it was politically forced upon the rulers by the glorious struggles that the adivasis waged persistently against the British.

The Forest Policy of 1952, the Wild Life Protection Act of 1972 and the Forest Conservation Act of 1980 downgraded these privileges of the peoples to concessions of the state in the post-colonial period. With globalisation, there are now further attempts to even exclude these paternalistic concessions as indicated by the draft 'Conservation of Forests and Natural Ecosystems Act'—that is to replace the forest act, and amendments proposed to the Land Acquisition Act and the 5th Schedule to the Constitution.

In 1991, 23.03% of STs were literate as against 42.83% among the general population. The government's Eighth Plan document mentions that nearly 52% of STs live below the poverty line as against 30% of the general population. In a study on Kerala, a state considered to be unique for having developed a more egalitarian society with a high quality of life index comparable to that of only the 'developed' countries, paradoxically shows that for STs the below-poverty-line population was 64.5% while for SCs it was 47% and for others it was 41%.

About 95% of adivasis live in rural areas and less than 10% are itinerant hunter-gatherers, but more than half depend upon forest produce. Very commonly, the police and forest guards and officials bully and intimidate adivasis, and large numbers of adivasis are routinely arrested and jailed, often for petty offences. Only a few adivasi communities, which are forest

dwellers, have not been displaced and continue to live in forests, away from mainstream development activities, such as in parts of Bastar in Madhya Pradesh; Koraput, Phulbani and Mayurbanj in Orissa; and parts of Andaman Islands.

Thousands of Korku children below the age of six died in the 1990s due to malnutrition and starvation in the Melghat Tiger Reserve of Maharashtra due to the denial of access to their life-sustaining resource base. Adivasis of Kalahandi and Bolangir in Orissa and of Palamu in south Bihar reportedly have severe food shortage. According to the Central Planning Committee of the Government of India, nearly 41 districts with significant adivasi populations are prone to deaths due to starvation, which are normally reported as such.



Invasion of adivasi territories

The Land Acquisition Act of 1894 legitimised the supremacy of the sovereign power to unleash the total colonisation of any territory in the name of 'public interest', which in most cases is not a community notion of common good; more so for the adivasis. The colonial justice concept of *res nullius* (that, which has not been conferred by the sovereign, belongs to the sovereign) and *terra nullius* (land that belongs to none) bulldozed traditional political and social entities—the beginning of the wanton destruction of traditional forms of self-governance.

The invasion of adivasi territories, which for the most part commenced during the colonial period, intensified in the post-colonial period. Most of the adivasi territories were claimed by the state. Over 10 million adivasis have been displaced to make way for development projects such as dams, mining, industries, roads, protected areas, etc. Though most of the dams (over 3000) are located in adivasi areas, only 19.9% (1980–81) of adivasi landholdings are irrigated as compared to 45.9% of all holdings of the general population.

India produces several minerals—among them, as many as 52 principal, 3 fuel, 11 metallic, 38 non-metallic and a number of minor minerals. Of these 45 major minerals (coal, iron ore, magnetite, manganese, bauxite, graphite, limestone, dolomite, uranium, etc.) are found in adivasi areas contributing some 56% of the national total mineral earnings in terms of value. Of the 4,175 working mines reported by the Indian Bureau of Mines in 1991/92, approximately 3,500 could be assumed to be in adivasi areas. Income to the government from forests rose from Rs 5.6 million in 1869/70 to more than Rs 13 billion in the 1970s. The bulk of the nation's productive wealth lies in the adivasi territories. Yet the adivasi has been driven out,

marginalised and robbed of dignity by the very process of 'national development'.

The systematic opening-up of adivasi territories and development projects, especially the 'tribal development projects', forced the adivasis to migrate. In the rich mineral belt of Jharkhand, the adivasi population has dropped from around 60% in 1911 to 27.67% in 1991. These developments have, in turn, driven out vast numbers of adivasis to eke out a living in the urban areas and in far-flung places in slums. According to a rough estimate, there are more than 40,000 tribal domestic working women in Delhi alone! In some places, development-induced migration of adivasis to other adivasi areas has also led to fierce conflicts, as between the Santhalis and the Bodos in Assam.



Internal colonialism

Constitutional privileges and welfare measures benefit only a minority of the adivasis. These privileges and welfare measures are denied to majority of the adivasis and they are appropriated by more powerful groups in the caste order. The steep increase of STs in Maharashtra in real terms by 148% in the two decades since 1971 is mainly due to questionable inclusion, for political gains, of a number of economically advanced groups among the backwards in the lists of STs. The increase in numbers, while it distorts the demographic picture, has more disastrous effects. The real tribes are irretrievably pushed down in the access or claim ladder with these new entrants cornering the lion's share of both resources and opportunities for educational, social and economic advancement.

Despite the Bonded Labour Abolition Act of 1976, adivasis still form a substantial percentage of bonded labour in the country. Despite positive political, institutional and financial commitment to tribal development, there is presently large-scale displacement and biological decline of adivasi communities, a growing loss of genetic and cultural diversity and destruction of a rich resource base leading to rising trends of shrinking forests, crumbling fisheries, increasing unemployment, hunger and conflicts. The adivasis have preserved 90% of the country's bio-cultural diversity protecting the polyvalent, pre-colonial, biodiversity-friendly Indian identity from bio-cultural pathogens. Excessive and indiscriminate demands of the urban market have reduced adivasis to being raw material collectors and providers.

It is a cruel joke that people who can produce some of India's most exquisite handicrafts, who can distinguish hundreds of species of plants and animals, who can survive off the

forests, the lands and the streams sustainably with no need to go to the market to buy food, are labelled as 'unskilled'. Equally critical are the paths of resistance that many adivasi areas are displaying – Koel Karo, Bodh Ghat, Inchampalli, Bhopalpatnam, Rathong Chu – against big dams that were proposed by the enlightened planners and which were halted by mass movements.

Such a situation has risen because of the discriminatory and predatory approach of the mainstream society towards adivasis and their territories. The moral legitimacy for the process of internal colonisation of adivasi territories and the deliberate disregard and violations of constitutional protection of STs have its basis in the culturally ingrained hierarchical caste social order and consciousness that pervades the entire politico-administrative and judicial system. This pervasive mindset is also a historical construct that got reinforced during colonial and post-colonial India.

The term 'criminal tribe' was concocted by the British rulers and entered into the public vocabulary through the Criminal Tribes Act of 1871 under which a list of some 150 communities, including adivasis, were mischievously declared as born 'criminal'. Though this shameful Act itself was repealed in 1952, the spectre of the so-called criminal tribes continues to haunt these de-notified tribes— Sansi, Pardhi, Kanjar, Gujjar, Bawaria, Banjara and others. They are considered as the first natural suspects of all petty and sundry crimes except that they are now hauled up under the Habitual Offenders Act that replaced the British Act. Stereotyping of numerous communities has reinforced past discriminatory attitudes of the dominant mainstream in an institutionalised form.

There is a whole history of legislation – both during the pre-Independence as well as post-Independence periods – which were supposed to protect the rights of adivasis. As early as 1879, the Bombay Province Land Revenue Code prohibited transfer of land from a tribal to a non-tribal without the permission of authorities. The Chotanagpur Tenancy Act of 1908 in Bihar, the Santhal Pargana Tenancy Act of 1949, the Bihar Scheduled Areas Regulations of 1969, the Rajasthan Tenancy Act of 1955 as amended in 1956, the MPLP Code of Madhya Pradesh of 1959, the Andhra Pradesh Scheduled Areas Land Transfer Regulation of 1959 as amendment in 1970, the Tripura Land Revenue Regulation Act of 1960, the Assam Land and Revenue Act of 1970, the Kerala Scheduled Tribes (Restriction of Transfer of Lands and Restoration of Alienated Lands) Act of 1975, and so on are state legislations to protect adivasi land rights.

In Andhra Pradesh, for example, enquiries on land transfer violations were made in 57,150 cases involving 245,581 acres of land, but only about 28% of lands were restored despite persistent militant struggles. While in the case of Kerala, out of a total claim for 9909.4522

hectares made by 8754 applicants, only 5.5% of the claims have been restored. And, this is happening in spite of favourable judicial orders—orders that the state governments are circumventing by attempting to dismantle the protective legislation itself.

The callous and casual manner with which mainstream India approaches the fulfilment of the constitutional obligations with reference to tribes, and the persistent attempts by the politico-administrative system to subvert the constitution by deliberate acts of omission and commission, and the enormous judicial tolerance towards all this speak volumes on the discriminatory approach that permeates the society with regard to the legal rights of the adivasis.



Race, religion and language

The absence of neat classifications of adivasis as a homogenous socio-cultural category and the intensely fluid nature of non-adivasis are evident in the insuperable difficulty in arriving at a clear anthropological definition of a tribal in India, be it in terms of ethnicity, race, language, social forms or modes of livelihoods.

The major waves of ingress into India divide the tribal communities into Vedddids, similar to the Australian aborigines, and the Paleamongoloid Austro-Asiatic from the north-east. The third were the Greco-Indians who spread across Gujarat, Rajasthan and Pakistan from Central Asia. The fourth is the Negrito group of the Andaman Islands – the Great Andamanese, the Onge, the Jarawa and the Sentinelese – who flourished in these parts for some 20,000 years but who could well become extinct soon. The Great Andamanese have been wiped out as a viable community with about only 30 persons alive, as are the Onges who are less than 100.

In central India, the Gonds who number over 5 million are the descendants of the dark-skinned Kolarian or Dravidian tribes and speak dialects of Austric language family, as are the Santhal who number 4 million. The Negrito and Austroloid people belong to the Mundari family of Munda, Santhal, Ho, Asur, Kharia, Paniya, Saora, etc. The Dravidian groups include the Gond, Oraon, Khond, Malto, Bhil, Mina, Garasia, Pradhan, etc., and speak languages of Austric or Dravidian family. The Gujjar and Bakarwal descend from Greco-Indians and are interrelated with the Gujjar of Gujarat and tribes settled around Gujranwala in Pakistan.

There are some 200 indigenous peoples in the north-east. The Bodo, Khasi, Jantia, Naga, Garo, Tripiri, Mikir, Apatani, Kuki, Karbi, etc., belong to the Mongoloid stock and speak

languages of the Tibeto-Burman groups and the Mon Khmer. The Adi, Aka, Apatani, Dafla, Gallong, Khamti, Monpa, Nocte, Sherdukpen, Singpho, Tangsa, Wancho, etc., of Arunachal Pradesh and the Garo of Meghalaya are of Tibeto-Burman stock while the Khasi of Meghalaya belong to the Mon Khmer group. In the southern region, the Malayali, Irula, Paniya, Adiya, Sholaga, Kurumba, etc., belong to the proto-Australoid racial stock, speaking dialects of the Dravidian family.

The Census of India 1991 records 63 different denominations as 'other' of over 5.7 million people of which most are adivasi religions. Though the Constitution recognises them as distinct cultural groups, yet when it comes to religion those who do not identify as Christians, Muslims or Buddhists are compelled to register themselves as Hindus. Hindus and Christians have interacted with adivasis to civilise them, which has been defined as sanskritisation and westernisation.

However, as reflected during the 1981 census, it is significant that about 5% of the adivasis registered their religion by the names of their respective tribes or the names adopted by them. In 1991, the corresponding figure rose to about 10%, indicating the rising consciousness and assertion of identity!

Though Article 350A of the Constitution requires primary education to be imparted in mother tongue, in general, this has not been imparted except in areas where the adivasis have been assertive. The NCERT – the state-owned premier education research centre – has not shown any interest. With the neglect of adivasi languages, the state and the dominant social order aspire to culturally and socially emasculate the adivasis so that they remain subdued by the dominant cultures. The Anthropological Survey of India reported a loss of more than two-thirds of the spoken languages, most of them tribal.



Fragmentation

Some of the ST communities of Himachal Pradesh, Uttar Pradesh, West Bengal, Sikkim, Arunachal Pradesh, Nagaland, Manipur and Mizoram have their counterparts across the border in China (including Tibet), Bhutan, Myanmar and Bangladesh. The political aspirations of these trans-border tribes who find themselves living in different countries as a result of artificial demarcation of boundaries by erstwhile colonial rulers continue to be ignored despite the spread of proliferation of militancy, especially in the north-east, making it into a conflict zone.

The adivasi territories have been divided amongst states formed primarily on the basis of languages spoken by the mainstream caste society, ignoring the validity of applying the same principle for the adivasis in the process. Jharkhand has been divided amongst Bihar, West Bengal, Madhya Pradesh and Orissa though the part under Bihar has now become a separate state after decades of struggle. The Gond region has been divided amongst Orissa, Andhra Pradesh, Maharashtra and Madhya Pradesh. Similarly the Bhil region has been divided amongst Maharashtra, Madhya Pradesh, Gujarat and Rajasthan. In the north-east, the Naga region is divided into Nagaland, Manipur, Assam and Arunachal Pradesh. Further administrative sub-divisions within the states into districts, talukas and panchayats have been organised in such a way that the tribal concentration is broken up, which furthers their marginalisation, both physically and politically.

The Scheduled District Act of 1874, the Government of India Act of 1919 and later the Government of India Act of 1935 classified the hill areas as excluded and partially excluded areas where the provincial legislature had no jurisdiction. These formed the basis for the Article 244 under which two separate schedules – the V Schedule and the VI Schedule – were incorporated for provision of a certain degree of self-governance in designated tribal-dominated areas. However, in effect, this remained a non-starter, though the recent legislation of the Panchayat (Extension to the Scheduled Areas) Act of 1996 has raised hope of a radical redefinition of self-governance.

By not applying the same yardstick and norms for adivasis as for the upper-caste-dominated mainstream society, by not genuinely recognising the adivasis' traditional self-governing systems and by not being serious about devolving autonomy, the Indian state and society displays a racist and imperialist attitude.

The call for a socially homogenous country, particularly in the Hindi-Hindu paradigm, have suppressed tribal languages, defiled their cultures and destroyed their civilisations. The creation of a unified but centralised polity and the extension of the formal system of governance have emasculated the self-governing institutions of the adivasis and, with it, their internal cohesiveness.



The struggle for future

The conceptual vocabulary used to understand the place of adivasis in the modern world has been constructed on the feudal, colonial and imperialistic notions, which combines traditional and historical constructs with the modern construct based on notions of linear scientific and technological progress.

Historically, the adivasis, as explained earlier, are at best perceived as sub-humans to be kept in isolation, or as 'primitives' living in remote and backward regions who should be 'civilised'. None of them have a rational basis. Consequently, the official and popular perception of adivasis reflects in the terms used for them: forest-bound, tribal dialect, animism, primitive occupation, carnivorous diet, naked or semi-naked, nomadic tribes, love drink and dance. Contrast this with the self-perception of adivasis: casteless, classless and egalitarian in nature; community-based economic systems; symbiotic with nature; democratic according to the demands of the times; accommodative history; and people-oriented art and literature.

The significance of their sustainable subsistence economy in the midst of a profit-oriented economy is not recognised in the political discourse. Rather, the negative stereotyping of the sustainable subsistence economy of adivasi societies is based on the wrong premise that the production of surplus is more progressive than the process of social reproduction in co-existence with nature.

The source of the conflicts arises from these unresolved contradictions. With globalisation, the hitherto expropriation of rights as an outcome of development has developed into expropriation of rights as a precondition for development. In response, the struggles for the rights of the adivasis have moved towards the struggles for power and a redefinition of the contours of the state, governance and progress.



The tourist welcomed ; The adivasi exiled...

Unmasked: reflections on tourism's impacts on indigenous communities in India

EQUATIONS

*Johar for us in Jharkhand is more
than just a word in our language...*

*...Johar is a spirit, an attitude, a feeling
and an expression of welcome, of gratitude,
of praise, of togetherness, a salutation...*

*...It is the word we first use
when we meet one another for the first time...*

*...We said Johar to you,
but our song and dance, our language and folklore
have become just pages in books of libraries
where your anthropologists can debate over.
Thus you have distorted our history.
You have misinterpreted our culture,
and made it a commodity to be marketed
at your universities and seminars.*

We said Johar to you...

[From the poem "JOHAR" – Manifesto of the Jharkhandis Organisation for Human Rights.]

In Hawaii, Craig Chatman, a native¹ Hawaiian says, *"Indigenous people do not own their own tourism and culture. The big travel corporations have also treated Natives like "wind up the Hawaiian and let him play music." We are an Indigenous Zoo and I take extreme offence to that."*

In Bali, Tjokorde Raka Kerthyasa says *"Some tourists and visitors who know nothing (or do not want to know) about the meaning and purpose of our customs and religious practices attend ceremonies just for the sake of taking pictures or proving that they have been on a holiday"*

In the Amazon, tour guides contract out to tourists to take them to into the wilds of the rain forest to "go native". Tourists follow them into indigenous villages, demand to stay with local families, eat their food, expect the locals to entertain them and make only a token payment before moving to the next village.

In New Zealand, Dikihoro Mulligan, a Maori says: *"We are a god-fearing and relaxed community. Maori elders are trying to coax the younger generation to educate themselves in their culture, which has huge potential. Even many Europeans who have lived here for generations don't know about us. Today, tourism is helping to create awareness about the rich Maori culture and traditions"*.

The indigenous peoples of India, who constitute 8.2% of the country's population² and live with great diversity in culture, language, lifestyle and art forms, are also rising to face the new invasion of tourism. This paper contextualises the growing debate on indigenous peoples' struggles in the country by drawing attention to tourism – as a compelling factor that has, in tangible ways contributed to their increasing exploitation, displacement and marginalisation. The paper discusses the issue in three parts – part one details impacts of tourism on indigenous communities along three lines of exploitation, eviction and benefit sharing with examples of community experiences from India as well as other parts of Asia, South America and Africa. Part two presents an overview of significant international guidelines that address the issue of tourism's impacts on indigenous communities and the ensuing debates. Part three analyses the current policy and legal framework in India related to tourism and the extent to which it recognises and addresses these concerns and opportunities.

Part One

How tourism has impacted indigenous communities around the world



The Indigenous on Display

Alerting us to the trend of the targeting of indigenous homelands for tourism, Deborah McLaren wrote a decade back³, "Marketing trends point toward the Amazon, the Himalayas, the hills of Northern Thailand, the tribal areas in Africa, and the aboriginal areas of Canada and Australia. Travel advertisements market the residents of such places as people who are warm, smiling, friendly, unthreatening; who are servile and welcoming; there for the tourist's pleasure...Tourism markets cultures – hula girls, wandering tribesmen, Asian mountain folk and Native Americans. Some critics of tourism suggest that when we travel, we buy a product, a product that includes people."

"Exotic" tourism and ecotourism have drawn wider attention to the richness and diversity of indigenous peoples' cultures, but frequently engage in "packaging" and marketing strategies which distort cultures, degrade traditional ceremonial practices, and transform indigenous communities into trinket-selling, wage-dependent Hollywood back-lots⁴.

That tourism in India has put indigenous peoples and their culture on display, for sale, is indisputable. A scrutiny of the colourful and attractive tourist brochures printed by central and state departments provides ample evidence for this.

"Orissa : the soul of India" - Orissa Tourism (1998)

"The antiquity of Orissa is endorsed by her ancient people who continue to inhabit their traditional dwelling places in remote areas in the deep forests and hilly terrains. Steeped in the mysteries that surround their ancient ways, the Orissan tribals continue to be a source of deep interest not only for anthropologists and sociologists but also for numerous tourists who flock to Orissa in search of the exotic mystique of this relatively unexplored state....

...Folk and tribal songs and dances continue to be an integral part of the Fairs and Festivals and village festivities throughout the year in Orissa and visitors can see these performed in their original settings...

... Orissa has 62 distinct tribal groups who continue to live in their traditional dwellings amongst the hills and forests and in a manner they have been accustomed with for centuries. A trip to the tribal areas can be an educative and exciting experience where you share the beauty of their usual customs for that brief moment in time...

“Bastar : not just an escape - a discovery” - Chhattisgarh Tourism Board (2002)

Bastar – Perfect for camping trips, painting holidays, tribal tours, adventure escapes and motoring tours...

... No matter where in the district you travel you cannot fail to see those elegantly clad tribal people making their way to the local haat (weekly market). Sure-footed, balancing their huge loads, the women walk in a single file, baskets on their heads, child on their hip, heavily-tattooed old ladies, brightly dressed young girls... It's an evocative sight...

... One can combine a trip here with a visit to a Sericulture Farm and the Anthropological Museum to enjoy a slice of Bastar's tribal culture...

(as part of the planned itineraries)

... This is a tribal country and we've arranged for you to meet some of the tribal people in their homes. It will be a wonderful opportunity to interact with them and learn something about their culture...

... After breakfast, a well-versed Palace guide will accompany you on an introduction to the secrets of Kawardha's little-known natural and tribal world. You will meet the gentle and friendly Baiga people, the principal indigenous forest tribe. Enjoy picnic lunch with them...

... You will also meet some of the local Bison-Horn Maria tribe, renowned for their spectacular ceremonial dancing. You will be entertained by a performance of the tribal people before returning to your hotel...

“India's Northeast : paradise unexplored” Incredible India

Ministry of Tourism, India (2005)

Arunachal Pradesh: *A visit to the Apatani tribal home is a must. The Apatanis are one of the most advanced and intriguing of Arunachal's tribal people. Both men and women tattoo themselves and the women wear great nose plugs made of bamboo and face tattoos.*

Nagaland: *Grocery shopping in Kohima is a treat, visit the wholesale market for a visual feast of Naga village women wearing their splendid tribal costumes and gathering to sell farm, field, forest and stream products.*

These excerpts from material fashioned to attract the tourist eye, are characteristic of how mainstream society, seeking tourism extravaganzas views indigenous people. In addition to the portrayal of indigenous peoples as products, even more disturbing is how the tribal woman is represented as exotic and desirable. Brochures and promotional materials are replete with phrases such as “a Reang belle with traditional jewellery”, “a smiling young Tripura girl”, “Khasi belle in dance costume” or just “tribal women”. Colourful photographs of women decked in traditional attire accompany these ‘titles’. Tribal villages are depicted as mystical, paradise-like, intriguing places that provide the viewer a glimpse of mystery, a taste of an alien culture. References to tribal culture, folklore, culture and traditional belief systems of these ancient people, often border on the arrogance and sometimes ignorance that typifies mainstream thinking. Commodification is evident – a traditional motif becomes an “artefact” or “souvenir”, traditional dresses and accessories – “costumes” and ancestral traditions – an “experience”.

World over, commodification of indigenous cultures has taken varied forms through tourism. Countries in the global south are not the only ones affected politically by tourism. In the United States, especially in Alaska and Hawaii, indigenous people must confront the political repercussions of the rapid growth of tourism. Jon Goss writes in ‘Seductions of Place’, *“Aloha’ is perhaps the most complex and certainly the most contested concept attributed to the Hawaiian people. For the visitor, it is typically glossed as simply greeting and leave-taking, or more generally ‘love’, but anthropologists discover deeper meanings”*⁵. With its unwillingness to engage in a society and its meaning with any depth and its need to create consumerist packages of nearly everything, the use, and abuse, of language and dialect and symbols is inherent in tourism’s exploitation of indigenous culture. As tourism makes its presence felt it is likely that ‘johar’ as the poem eloquently puts it, has a similar fate in store.

The transformation of Mexico’s famed Huichol Art from being a manifestation of religious faith for the Huichol indigenous community to being a source of economic gain is yet another example (Cruz, 2002). The Huichol believe themselves to be “mirrors of the gods” and their art reflects a sacred vision of the world, but tourism and globalisation have made their art easily available on the internet or reproduced to suit tourists’ preferences for souvenirs.

In the Philippines, the mountainous province of Sagada has gained prominence as a tourist spot, threatening the survival of the Kankanaeys. The people of Sagada revere their ancestral lands but curious tourists have invaded the sacredness and solemnity of rituals celebrating the agricultural cycle. Furthermore, their sacred burial sites have been desecrated by tourists taking away bones of their ancestors as souvenirs and freely using coffin covers for graffiti.⁶

In the Andaman Islands in the Indian Ocean, the Jarawas are a dwindling tribe with just 250-odd surviving members living in the Islands. In 2002, the Supreme Court of India passed a set of landmark judgements to protect the Islands' fragile ecology and its tribal communities. One of the orders was the closure of the Andaman Trunk Road (ATR) – an arterial road constructed in the 1950s connecting South to North Andaman passing right through the Jarawa tribal reserve area. But the Islands' Administration and its industrial lobbies have been violating the Court's orders with impunity. Apart from problems of alien food, loss of precious forest cover and exposure to diseases against which Jarawas have no immunity, the ATR had also facilitated the rise of a pernicious endeavour, perversely called 'Jarawa Tourism'⁷. Tourists visiting the Islands were being openly solicited with offers of rides along the ATR and the promise to see stone-age, naked tribes. But, more recently, with greater awareness and rising protests, one at least notices a welcome change in the Administration's attitude and respect for these communities with tourism brochures making mention of them but clearly stating that interaction with or photography of these tribes is prohibited.

In India, one sees a growing trend of tribal art being "mainstreamed" – as one tourist brochure put it – "...Some of the finest works of Bastar crafts are showcased in some of India's five star hotel lobbies and upmarket urban stores..." While there are efforts to use tourism also as a means of keeping local art, culture and handicrafts alive by assuring a market for them, the fear of commodification and twisting them out of their intrinsic contexts, meanings and functions is not unfounded. An adivasi woman from Chhattisgarh, India, referring to statues of their deities made from traditional bell metal, spoke of her fear of entering any room in which they were kept! She said she could not face them inside a room as their gods were always kept outside the village to protect them from harm. In making a popular product, no one asked the adivasi what they thought and how they felt.



Displacement of the First People from their lands: Tourism Evicts...

Terri-Lynn Williams-Davidson, an indigenous writer says this of the connection of indigenous people and the land they inhabit – *"For indigenous peoples, the Earth and all of its life forms the fundamental context, the foundation and ultimate source from which culture emerges."*⁸ For, while the role of big companies in oil, drugs and timber business has pushed people out, the role of global "conservation" efforts in creating millions of "conservation refuges" is equally insidious.⁹

In his aptly titled piece "Conservation Refugees", Dowie lucidly observes that with the massive political and financial backing that was given to conservation groups, the process of 'conservation' through creation of Protected Areas (PAs), National Parks and Sanctuaries speeded up globally. In 1962, the world had some 1000 official PAs, today the number is close to 110000. The area under protection has doubled since 1990 with 12% of all the earth's land (nearly as much as the entire land mass of Africa) is under 'conservation'. At a first glance, such land and "nature" conservation seems good, but when we consider its impacts on native people of the world, one realises that all land had once been occupied by who now constitute the world's 6 million "conservation refugees".

Tourism has also played its part in the eviction of indigenous people from their ancestral lands only to then open them up to 'ecotourism'. All PAs are irresistible tourism attractions - their evident natural beauty, wildlife attractions and wilderness component have lured visitors in large numbers. The lack of a clear and generally accepted definition is probably what has made 'ecotourism' both appealing and highly dangerous. Ecotourism has come hand-in-hand with conservation but its contribution to conservation efforts has been questionable and empirically unproven yet. The edge to ecotourism came with its positioning as a more 'sustainable', 'green' and 'environment-friendly' form of tourism – an imaging that targeted eco-sensitive travellers and worked in favour of the industry but to the detriment of forest dwelling communities.¹⁰

In Kidepo Valley National Park in Uganda, the situation of the Ik tribe is dire. Before the creation of the Park, the Ik – a hunter-gatherer society - gathered vegetables, roots and berries as they moved during their annual nomadic cycle that took them through Sudan and northern Kenya. When the valley was declared a National Park, the Ik were forcibly evicted without warning. The draconian Ugandan National Park, which does not allow any form of local utilisation, meant that the Ik were now confined to the inhospitable mountain slopes, unable to follow their previous lifestyle. The Ik had little impact on the wildlife as they hunted only for consumption but today the park entertains European and North American tourists who come on hunting safaris!¹¹ It is estimated that well over 50 per cent of indigenous communities in Kenya have experienced some form of land dispossession in the name of ecotourism or other development initiatives (this reaches 60–70 per cent in northern Kenya).¹² Communities affected by exploitation and discrimination, include the Maasai and the Ogiek in the Southern rangelands; the Endorois, Ilchamus, Pokot, Sabaot, Sengwer and Turkana in the Rift Valley; the Borana, Ghabra, Rendille and Somalis in northern Kenya; and the Orma in the wetlands of the Kenyan coast.

India has a total of 650 Protected Areas¹³ (96 National Parks, 508 wildlife sanctuaries, 29 tiger reserves, 14 existing biosphere reserves and 3 conservation reserves) and an

estimated 2 million of the world's conservation refugees¹⁴. It comes as no surprise that these national parks, wildlife sanctuaries and biosphere reserves are also the homelands of tribal populations for whom the forests are the basis of habitat, survival and history. But British colonisation followed by a colonisation effected by the government of independent India, produced a new understanding of forests, which was to sound the death knell for the country's tribal communities. Firstly this understanding was based on the Western notion of 'wilderness' – an expanse of greenery devoid of all human habitation. The second was a reformulation of 'conservation' which implied the de-legitimisation of forest dwellers and part of the of the forest habitat, de-recognition of traditional rights and exclusion and eviction of tribal communities from forests.¹⁵

In India, national parks and wildlife sanctuaries have been assiduously promoted as ecotourism attractions. The National Tourism Policy of 2002 clearly states – *"wildlife sanctuaries and national parks need to be integrated as an integral part of the India tourism product, and priority needs to be given to the preparation of site and visitor management plans for key parks, after a prioritization of parks."* The aspect of eviction of indigenous people from their traditional lands for the cause of ecotourism development and its consequent impacts does not find adequate mention in these policies.

The Kanha National Park sprawls over a wide area in Mandla and adjoining Balaghat districts of the state of Madhya Pradesh and is in the forest belt of the Satpuras and the Vindhya that stretch for almost 500 km east to west. This rich forest is the ancestral home of the Baiga and Gond tribals. The tiger is undoubtedly Kanha's main tourism attraction and in 1974, the government declared the area as a "Tiger Reserve". Today, tiger conservation efforts have displaced 26 tribal villages (comprising 1217 families covering a displaced area of approximately 5431 sq. kms)¹⁶. Tribal villages that used to sustain life with cultivation and collection of minor forest produce are today displaced and prohibited from collecting forest produce. Efforts have been made to resettle them into nearby areas but without providing adequate title deeds for their lands. While life is tough and sustenance nearly impossible, harassment by forest officers is a common occurrence. But today, Kanha is one of the most popular National Parks of India. An official tourism promotion website claims – *"When you holiday in Kanha you will feel as if you are entering the pages of this unforgettable book and you're likely to hear Sher Khan the tiger roar in the jungle..."*¹⁷ They obviously make no mention of the voices of evicted adivasis.

A similar fate met the tribals living inside the Pench National Park, also situated in the same forest ranges of Madhya Pradesh and declared the country's 19th Project Tiger Reserve in 1992. With the launch of the World Bank's Eco Development Project¹⁸ in 1995, several villages within and in the periphery of the sanctuary began to be systematically displaced.

Fifteen Gond families who had traditionally lived on the banks of the Pench River were displaced from their village of Alikatta and forced to resettle in Durgapur.¹⁹ They were told they had to move because a National Park was being created. Villagers, who had fertile, cultivable land in Alikatta, today don't cultivate or go into the forest anymore for fear of being arrested. The Gond culture and identity took a back seat in the face of establishing the Park, and relations between villagers and the Forest Department have deteriorated. It is not even clear if wildlife is being adequately "protected" when the sanctuary was opened to tourists.²⁰

The Nagarhole National Park is located in the Kodagu and Mysore districts of the state of Karnataka. A total of about 32000 adivasis reside in and around the National Park. Tribes of the area are mainly the - Jenukurubas (honey gatherers), Bettakurubas (Hill Kurubas), Yeravas, Soligas and sub castes of Yeravas i.e. Panjeri Yeravas and Pani-Yeravas. The adivasis of Nagarhole were first displaced by the same controversial Eco Development Project of the World Bank, which placed severe restrictions on them including bans on cultivation, hunting and on collection of forest produce. Notwithstanding this injustice, the government of Karnataka awarded a contract in 1994 to Gateway Hotels and Getaway Resorts (a subsidiary of the Taj Hotels group) to run India's first eco-friendly resort within the Nagarhole National Park. Strong resistance to this move by local groups and adivasi rights organisations, supported by legal interventions that were upheld both at the High Court and Supreme Court level finally resulted in stalling construction of the resort and a strong indictment of the role of the state government in this sorry affair. The Nagarhole judgement set precedence for the use of protected areas and national parks for eco-tourism development but the fate of the adivasis continues to hang in balance. The region continues to have a growing number of tourist resorts mushrooming around the Park periphery which have lead neither to protection of forest land nor to adivasi wellbeing.²¹

These cases are emblematic of the growing tension between communities and government policy privileging a certain understanding of conservation in India. Creation of 'tourism zones' inside PAs further intensifies the seeming contradiction between the aims of conservation and the rights of displaced communities. This has lead to the process of legitimising the functioning of presence of a global industry inside an ecologically sensitive region, while indigenous people and local communities have been aggressively ejected from their forests.

When the United Nations declared 2002 as the International Year of Ecotourism (IYE), it was met with vociferous protest primarily from the world's indigenous peoples. Indigenous groups, summarising the fundamental problems they face from tourism, warned against the large scale unrestrained promotion of ecotourism without an adequate assessment of

the nature of the industry and its effects on the environment and people.²² It would, they said, lead to disruption of local economies by displacement of activities that previously served to carry self-reliant and sustainable community development. Physical infrastructure to provide tourists access to remote areas would expand and this would lead to increasing damage to the environment and local communities. Several years later, these fears and concerns are proved to be not unfounded.

The preservation of biological diversity is undoubtedly urgent. The point however, is to revisit its fundamental principles.²³ In India, the National Park Management concept is a blind copy of the American experience based on wilderness. Citing studies, Gadgil and Guha in their book – “This Fissured Land” state that the – “...highest levels of biological diversity are found in areas with some (though not excessive) human intervention... the dogma of total protection can have tragic consequences.” Mark Dowie provides a thought provoking statement that he believes is receiving acceptance, albeit hesitatingly, from various parties to the debate that – “Indigenous Peoples’ presence, it turns out, may offer the best protection that protected areas can ever receive”²⁴. This is, in fact, a position that indigenous people have maintained all along.

Notions of ‘conservation’ in India have also failed to acknowledge the role that adivasis have played in protection of nature and its diverse forms through the symbiotic relationship they share. Adivasis in various states have religious beliefs, prohibitions and taboos to the access and use of natural resources. In Kalahandi, Orissa, the tiger is treated as a brother and if a tiger dies, the adivasis observe community mourning. Similarly in East Singhbhum in Jharkhand, adivasis worship Gorang, Dorang and Buchiwudi - gods and goddesses whose abode are the hills, rivers and forests, making these sacred.

Moti Ram Baiga from Daldali, Chhattisgarh says: “We worship our mountains, trees and rivers. Our Devi Devta (deities) “Kher mata”, “Khunt Paat”, “Thakur devta” or “Nanga Baiga” live in these forests and mountains. They protect us from all evils.”

Communities that share such a strong bond with nature, whose religious beliefs and social customs are oriented to protect nature from over exploitation, are now being termed ‘encroachers’ in their homelands. States like Jharkhand, Chhattisgarh and Orissa which have abundant forest, water and mineral resources have witnessed several cases of marginalisation of communities by modern development. Industrialisation, mining, dam and other big infrastructure projects have led to large scale displacement of indigenous communities, affecting their livelihood and socio-cultural milieu. Tourism seen as gentler, more sophisticated and green, if not unmasked, can prove to be the uninvited and exploitative guest into their homelands.



Indigenous Communities' share of the pie: Tourism Benefits?

While there is growing resistance by indigenous communities to exploitative forms of tourism, there are many who are keen to explore how they can benefit from tourism. But do current models of tourism development provide scope for community involvement and community control and do they materialise in community benefits? How do current forms of tourism also engage with issues of culture and identity of these communities?

New forms of eco-travel profess to save the planet and create economic advantages for local people. But do they? Research by NGOs and even by the World Bank point to the fact that Park Management strategies have not met with much success in terms of local economic development.²⁵ Even at highly "successful" parks like the Khao Yai National Park in Thailand, where tourists bring in nearly USD 5 million annually, the surrounding communities remain poor. Ecotourism revenues in Rwanda support park management but have not been able to translate into economic alternatives for local people. Developers often overlook the critical aspect of benefit sharing that is intrinsic to the definition of ecotourism.

The more disturbing issue is the denial of indigenous peoples' rights in the context of tourism. According to Tourism Rights International, "prior informed consent" is crucial; its absence has been at the heart of most conflicts which indigenous communities face from the outside world. This includes: access to all information (negative and positive) concerning proposed tourism activities as well as access and participation in policy making that affects them, official support for tourism models developed by indigenous people themselves and the absolute right to say "no". Alison Johnston opines – *"If the ecotourism industry wants to engage Indigenous Peoples in a way that naturally draws community support, it must be willing to learn who it is talking to, what these people's experiences and aspirations are and why the right to self-determination is so passionately defended. Companies need to learn how to approach business as a HOLISTIC relationship."*²⁶

Demands for benefit sharing in tourism by indigenous people come in different forms and are not always directly associated with a tourism project. In the Andes, indigenous people demand compensation for having their photographs taken. A woman in Otalavo exclaims – *"We see our and our children's photos on postcards. We do not benefit from our photos being taken, a tourist does. We demand part of the profits."* In the mountainous regions of northern India, hill communities supplement their incomes by allowing tourists to briefly adorn their traditional dress and be photographed. Tribal communities in Mexico are now

getting more worldly wise and demanding royalty for use of their motifs and art forms on tourism promotional material.

There are also few international initiatives, which are quoted as having moved from the “community-based” forms of tourism to being genuinely “community-owned” by indigenous people. The Toledo Ecotourism Association (TEA) in Belize— is a community-owned organisation owned and operated by an association of Mopan, Kek’chi and Garifuna villages.²⁷ The objective of TEA is to share the benefits of tourism as widely as possible throughout each participating village. Guides, food providers and entertainers are rotated among seven to nine families in each village. A parallel programme is succeeding in Ecuador. Ricancie (Indigenous Community Network of the Upper Napo for Intercultural Exchange and Ecotourism) was founded in 1993 by several Quichua communities living in the Napo province of Amazonian Ecuador.²⁸ Their goal is to improve the life of nine Quichua villages via a community-based ecotourism project. Prior to this, tours in the region were conducted by foreign tour operating companies, which provided little benefit to the villages. Ricancie has been able to change that by adopting a self-determined path where all decisions are taken by villagers. In Australia, the Mutawintji National Park, Historic Site and Natural Reserve in New South Wales were returned to aboriginal ownership in 1998 and is now run by the Mutawintji Local Aboriginal Land Council.²⁹ The organisation is in charge of all tours to the Park and has licensed their operators. In Africa, to garner greater local benefit from tourism, San community members from Botswana, Namibia and South Africa approached organisations to support them in initiating community-owned joint venture tourism projects.³⁰ The movement has spread to San communities in other regions who have felt encouraged to start their own tourism ventures not only for economic gain but also to inform tourists about San culture and traditions.

In few states of India, attempts have been made where civil society and local people have played a role in deciding the nature and form of tourism in their areas. In 2003, a group of people in Jharkhand, mostly belonging to various indigenous communities from different districts of the State, evolved the “Jharkhand Peoples’ Policy on Sustainable Tourism”. The inspiration to develop such a people’s policy came from the people of Pan Sakam, a village near the famous Dasam waterfall of the region, as adivasis of this village had taken control of the waterfall after a prolonged fight with the Forest Department. The peoples’ policy includes benefit sharing of resources, access to natural resources and provision of core team formed by communities, looking after planning, implementation and monitoring. This policy was presented to the state tourism department, but so far no action has been taken by the government to incorporate its suggestions.

Similarly, in Kataki village of Araku panchayat (Andhra Pradesh), there is a small waterfall on

the Gostani River. The Gram Sabha has taken steps to develop this as a tourist attraction and has created basic infrastructure like pathways and stairs and a check post. It also collects toll from tourists and allows them to visit the waterfall. But as this spot has gradually become popular among tourists who visit the nearby Borra caves, realising the revenue potential, the Andhra Pradesh Tourism Development Corporation (APTDC) has now planned to develop the waterfall area as a tourism product. If not opposed, such a move will lead to transfer of control and benefits moving from the Gram Sabha to the state owned APTDC.

Experiments and models in India privileging indigenous ownership and control of tourism are yet nascent.³¹ But with growing interest in responsible tourism in India, policy makers need to study these initiatives for promoting a tourism that is community-led, owned, and implemented. Many indigenous communities hope that tourism will offer an alternative to more destructive forms of “development” in their regions such as logging, mining and other extractive industries. They are alert to and some even welcome ecotourism projects that can help conserve their natural environments and provide alternative sources of livelihood. There are no ready models or easy answers to these aspirations, but what seems essential is that alternatives, best practices and new models be evolved by and with them.

Part Two

International guidelines addressing issues of tourism and indigenous peoples

Recognition of tourism issues in the indigenous peoples’ debate has found place in many international guidelines. Many of these guidelines and codes have developed in response to powerful resistance by indigenous groups to impacts of tourism development on their lives, cultures and regions. While they are not legally binding, they form a useful guiding framework to governments and policy makers on the issue of indigenous people and tourism.

One of the first institutions to put in place progressive conventions respecting indigenous communities’ traditional rights was the International Labour Organisation. The ILO Convention on Indigenous and Tribal Populations, 1957 (No. 107), recognises indigenous peoples’ ownership of the lands they occupy. It was ratified by 27 countries, mainly in Latin America. India has also ratified the Convention. In 1989, the ILO revised this Convention,

making it much stronger. ILO Convention No. 169 (1989) provides generally that “special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment” of indigenous peoples, and that *“such measures shall not be contrary to the freely-expressed wishes of the peoples concerned.”* Convention No. 169 is a comprehensive instrument covering a range of issues pertaining to indigenous and tribal peoples, including land rights, access to natural resources, health, education, vocational training, conditions of employment and contacts across borders.³² It also has strong clauses in relation to seeking prior informed consent from indigenous people before undertaking development activities in their regions. It further states that – *“indigenous peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development.”* Only 13 countries have thus far ratified ILO Convention 169; India is not one of them. These ILO clauses have significant implications when applied to tourism and can be effectively used to promote participation of indigenous communities in tourism in deciding its forms and priorities and prevent undesirable forms of its development.

Specifically on tourism, the most universally known set of guidelines for tourism development is the UNWTO Global Code of Ethics that received official recognition by the UN General Assembly on 21 December 2001. Clause 1 of Article 1 of the Code articulates: *The understanding and promotion of the ethical values common to humanity, with an attitude of tolerance and respect for the diversity of religious, philosophical and moral beliefs, are both the foundation and the consequence of responsible tourism; stakeholders in tourism development and tourists themselves should observe the social and cultural traditions and practices of all peoples, including those of minorities and indigenous peoples and to recognize their worth. It further states in Article 2 “...tourism activities should respect...the individual rights of the most vulnerable groups, notably children, the elderly, the handicapped, ethnic minorities and indigenous peoples.”*

The Oaxaca Declaration of the International Forum on Indigenous Tourism, adopted in 2002 is another landmark declaration recording the impacts of tourism on indigenous communities. Issued by representatives of indigenous communities from 13 Western Hemisphere countries at the time of the IYE, the Declaration stated – *“We register our profound disagreement with the IYE’s and ecotourism’s most basic assumptions that define Indigenous communities as targets to be developed and our lands as commercial resources to be sold on global markets. Under this universalistic economic framework, tourism brings market competition, appropriates our lands and peoples as consumer products, and renders our traditional knowledge vulnerable to bioprospecting and biopiracy.”* It goes on to reject the IYE to be used as a space to legitimise the takeover of indigenous lands by “sustainable

development". The Declaration articulates several pertinent points with regard to how indigenous people are viewed in tourism. Primary among these is the need to recognise that indigenous peoples are not "stakeholders" but *"internationally-recognized holders of collective and human rights, including the rights of self-determination, informed consent, and effective participation."* It particularly addresses governments, private developers, conservation and ecotourism NGOs, development agencies and specialists. It asserts *"Tourism is beneficial for indigenous communities only when it is based on and enhances our self-determination. Outside 'experts and assistance' are useful to us only if they work within frameworks conceptualized and defined by our communities. Therefore, tourism projects must be undertaken only under the guidance and surveillance of an Indigenous Technical Team, and only after a full critical analysis of the long-term pros and cons of tourism development."* In addressing the United Nations, the Declaration appeals for devising a transparent and honest process that allows for indigenous peoples participation directly in tourism development. It demands that national governments implement laws and regulations pertaining to the environment and indigenous peoples and urges for the development of ecotourism guidelines that can regulate visitation in conformance with local culture and sensitivities.

Another process in motion has been with the Draft UN Declaration on the Rights of Indigenous Peoples. On Thursday 29 June 2006, the Human Rights Council adopted the Declaration on the Rights of Indigenous Peoples and recommended its adoption by the General Assembly³³. The Declaration was one of the chief outcomes of the United Nations' International Decade of the World's Indigenous People (1995-2004)³⁴ initiative with the main objective of strengthening international cooperation for the solution of problems faced by indigenous people in such areas as human rights, the environment, development, education and health. This Declaration, which is pending adoption by the General Assembly, it is hoped, gives wider publicity and endorsement to rights of indigenous communities. While it does not mention tourism specifically, its applicability would definitely extend to situations of tourism infringing indigenous rights. In the words of the UN's Permanent Forum on Indigenous Issues³⁵ - *"When adopted, it will likely be the most comprehensive statement of the rights of indigenous peoples ever developed: the draft declaration foresees collective rights to a degree unprecedented in international human rights law. Adoption of this instrument will give the clearest indication yet that the international community is committing itself to the protection of the individual and collective rights of indigenous peoples."*

But not all UN processes have received the endorsement of indigenous communities. An intensive debate has been ensuing internationally in the context of the Convention on Biological Diversity's (CBD) tourism guidelines. When in 2004, the CBD's seventh Conference of Parties (COP7) planned to finalise and adopt the draft tourism guidelines, many indigenous groups wrote in stressing that the adoption be stalled, as indigenous people

had not been party to its formulation. The statement from the International Indigenous Forum on Biodiversity (IIFB) to the Chairman of the COP stated – *“We are dismayed to learn that draft guidelines on tourism are being considered for adoption here in Kuala Lumpur. The draft guidelines focus on vulnerable ecosystems. This causes great anxiety. Globally, it is the Indigenous Peoples’ ancestral territories that are most vulnerable to the so-called ‘eco’ tourism industry. This sector has a documented standard of abuse. Again, we must stress that worldwide the vulnerable areas in question are Indigenous territories.”*

Additionally, the lack of cultural sustainability and diversity in the Guidelines is an equally serious matter of concern. The IIFB rejected the process and content of the CBD’s tourism guidelines on grounds of the disregarding and non-representation of indigenous peoples. Indigenous people’s representatives had urged that the matter of adoption of the draft tourism guidelines be deferred to COP 8, two years later in 2006. However, despite these appeals, the CBD went ahead and adopted the Tourism Guidelines that are now formally part of the CBD. For indigenous people, the guidelines continue to disregard issues of cultural sustainability and use of indigenous peoples’ ancestral lands by tourism. It is held as a travesty of the process of democratic consultation that institutions like the CBD are meant to stand for. In her analysis of these events surrounding the CBD, Alison Johnston observed – *“In UN forums, Indigenous Peoples have observed mounting apprehension among world governments towards their submissions – particularly on ancestral title, which entails customary law for sustainability. World governments know that Indigenous rights and international environmental standards are routinely overridden. They want to look forward to profit, not become mired in present or past issues like liability and compensation. Thus, as the CBD process on tourism progressed, it became evident that many feared the Indigenous Peoples’ analysis. There was a level of protectionism which had no rational explanation other than the corporate bottom line.”³⁶*

These international guidelines do provide a useful framework that national governments may choose to adopt. However, processes like the CBD are indicative of the fact that even at the global level, there remains a challenge in ensuring the meaningful and rightful participation of indigenous peoples in processes that deeply impact them.

Part Three

An overview of tourism policies in India in the context of the indigenous peoples' debate

Tourism came on to the radar of Indian policy makers during the sixth five-year plan period (1977-1982) when the country's first tourism policy was introduced. Soon after, in the 1985-90 period, tourism was elevated to the status of an industry that gave it access to institutional financial support, infrastructure support and a rationale for rationalisation of taxes applicable to the sector. The post liberalisation period from 1991 witnessed further opening up of natural and biodiversity-rich areas in the country for tourism. Ecotourism was the new buzzword and the focus was on forests, coasts, hills, mountains and other biodiversity-rich regions. Many state governments began exploiting the 'market' potential of tourism by actively promoting ecotourism, culture and heritage tourism, deregulating coasts and opening up forests for investment in tourism.



National Policies on Tourism

The National Tourism Policy (NTP) 2002 has identified ecological sustainability, judicious use of natural resources and tourism as a means to alleviate poverty as some of its basic principles. The policy recognises lack of community participation as one of the factors contributing to increasing conflicts in tourism areas and therefore, emphasises greater community participation, role of panchayats and other local bodies especially in ecotourism and adventure tourism activities.

Although progressive compared to earlier policies, the NTP fails to clearly identify and provide guidelines to work with some of tourism's adverse impacts. In relation to indigenous communities, the policy makes two cursory references to indigenous and tribal communities.³⁷ The policy emphasises ecotourism but does not even highlight the need for caution while promoting tourism in areas where indigenous communities live. The adverse impacts of tourism on adivasis including issues of commodification of culture, land alienation, denial of access to resources and exploitation are not acknowledged. Other important policy documents on tourism have also overlooked the critical need to regulate tourism in indigenous areas. The X Five Year Plan's chapter on tourism does not make any references to concerns regarding indigenous communities but, like the NTP,

asks governments to focus on ecotourism promotion. Laying the foundation for the next five years, the report of the Tourism Working Group for the XI Five Year Plan places high emphasis on promotion of heritage and culture tourism along with ecotourism but yet again, fails to take notice of the need to regulate tourism such that indigenous communities are not adversely impacted.³⁸

The Ministry of Tourism (MoT) - Government of India launched its Ecotourism Policy and Guidelines in 1998. These guidelines have been formulated “to ensure regulated growth of ecotourism with its positive impacts of environmental protection & community development”. The Ecotourism Policy of 1998, issued by the Ministry of Tourism, is based on several international guidelines and frameworks prepared by various tourism industry associations.³⁹

But with a focus on environmental conservation, the policy fails to acknowledge the cross linkages between ecotourism and the social, cultural, economic and institutional processes of the indigenous and local communities. By identifying indigenous and local communities as “stakeholders” and not “rights holders” who have knowledge of the local environment, the policy makes them subservient to a process where environmental protection is beyond their control and is being pursued for the sake of supporting economic enterprise.⁴⁰

Mentioning the need for involvement of local community, recognition to local livelihood and tourism that is compatible with environmental and socio-economic characteristics of local community gives a false sense that the policy privileges community based and sustainable tourism principles. But when it comes to the actual role to be played by these communities in need-based planning for physical infrastructure, zoning exercises, evolving tourism management plans, and impact assessment, the policy goes silent.⁴¹



State Tourism Policies

Several states have evolved their own policies on tourism, and these have not necessarily been inspired by the broad principles of the national policies. What remains common is that state policies too have failed to address tourism from a peoples' perspective and thus their tourism policies read more like investment and marketing strategy papers.

Madhya Pradesh, one of the first states in the country to announce a tourism policy (1995), has identified promotion of ecotourism and adventure tourism as one of the key objectives.

Cashing in on its 31% forest area, in 2001-02, the Department of Tourism, Government of Madhya Pradesh formulated an Eco and Adventure Tourism Policy for the state. The background note to the policy states - *"Today's tourist is not content with cultural or religious tourism alone- the tourist today looks for some thrill, fun, adventure and something other than routine. In keeping with this change in attitude of tourists, the State Government has decided to actively promote Eco-Tourism and Adventure Tourism. In order to popularize and develop these forms of tourism, Government is for the first time, seeking participation of private investors."* The other key points of the policy include measures to involve private participation.

But in a state with 23% proportion of its population as adivasis, the government's priority seems to be to satisfy the changing demand of tourists, rather than address the livelihood concerns of local communities. Forest eviction due to declaration of national parks and sanctuaries is rampant in Madhya Pradesh, with Kanha and Bandhavgarh as glaring examples. The state tourism policy does not appear to take cognisance of these problems.

Neighbouring Chhattisgarh is no different. From the 2006 tourism policy, it is clear that tourism promotion and marketing of the state as a tourist destination are the clear focus areas of the state government. It mentions principles like sustainability, community participation and environmental conservation without the wherewithal to ensure that these principles are implemented. It talks of decentralised tourism development and local community participation but these seem merely lip service as the same policy has made the state-government managed Chhattisgarh Tourism Board as the nodal agency for all tourism-related development! The policy also makes some ludicrous propositions to ease tourist connectivity like proposing helicopter facilities into interior inaccessible areas - areas where tribal and indigenous population lives. Its focus on "Ethnic tourism" is strong and the policy states that it will attempt at showcasing the state's rich cultural heritage and monuments, which will be integrated into the ecotourism circuit.

Orissa launched its tourism policy in 1997 and this is also no different from other state policies. In the state's tourism policy, Ganjam, Kalahandi, Kandhamal, Deogarh, Dhenkanal, Angul, Keonjhar and Mayurbhanj proposed for wildlife tourism, all have significant adivasi population. The commodification of adivasi culture is evident through proposals like - "a museum of tribal art and artefacts will be set up in different tribal regions at Bhubaneswar to bring tribal life and culture alive for the tourists."

Current tourism and ecotourism policies that actively promote forms of tourism in adivasi-populated areas of the country will only intensify inequities. The growing trend towards declaring areas as National Parks and Wildlife Sanctuaries and up-gradation of forests within the broad category of 'Protected Areas' in the country is disturbing from the perspective

of adivasis. In 1935, after the enactment of Indian Forest Act 1927, there was only one national park in the country - Jim Corbett National Park. In the 35 years hence, i.e. up till 1970, only 5 more were added to this list. However, the 1972 Wildlife Protection Act, Project Tiger initiated in 1980, Forest Conservation Act 1980 and several legislations have been instrumental in identification and up-gradation of forest areas into protected areas, national parks and wildlife sanctuaries. As a result, by 2004, India had 92 declared national parks and several others are in pipeline. Similarly, the declaration of more areas under reserved and wildlife sanctuary categories means further deprivation of adivasi rights over forests.



Legal Safeguards and provisions that could be applicable to tourism as well

The 73rd and 74th Amendments, 1993 to the Indian Constitution were landmark legal provisions, allowing greater peoples' participation in planning and decision making. Initially, the Amendment was valid for all parts of India, including Schedule V Areas. But as traditional tribal institutions were still functional and required legal legitimacy to their self-governing systems, several activists and groups challenged the implementation of 73rd Amendment in Schedule Areas. In 1996, based on the Bhuria Committee's recommendations, the PESA Act was enacted that went one step further to the 73rd Amendment by acknowledging the rights of adivasis to plan and decide the course of development in their regions by empowering the Gram Sabha to have a say in the nature of development, land acquisition and also in resettlement and rehabilitation measures in the region. The Gram Sabha and Panchayat have also been given the power "to prevent alienation of land in the Scheduled areas and to take appropriate action to restore any unlawfully alienated land of Scheduled Tribe"⁴² Along with these important clauses on people's role in decision making, PESA also gives rights over minor water bodies and minor minerals.

Orissa has diluted its Gram Panchayat Act, while Jharkhand's Panchayat Act is not in accordance with the central legislation. States like Madhya Pradesh and Chhattisgarh who adopted PESA provisions are bypassing their own state laws in favour of private companies while in Andhra Pradesh, the government machinery is influencing the gram sabha's decision on transferring land to mining companies. The clause empowering the grama sabha to monitor land acquisition and alienation is particularly important in the light of the nature of tourism development in these areas and the need for regulation. While examples abound of disregard and violation of the PESA in the context of extractives-linked industries, we begin to see a similar trend in the context of tourism. In Anantgiri mandal of Andhra Pradesh, which is a Scheduled Area, the last few years have seen several new resorts

and hotels come up in the Araku valley. Similarly, areas around the Kanha National Park in Madhya Pradesh have about 30-35 resorts that have come up. In most of these aforesaid cases, tourism developed mostly without consultation or consent of the grama shbhas.

Another historic development in the legislative space is the Scheduled Tribes and other traditional Forest Dwellers (Recognition of Forest Rights) Act 2006. Reserved and protected forests, sanctuaries, national parks and other protected areas have been given the status of “community forest resources” by this Act and therefore, rights of tribal and other forest dwelling communities extend over these areas. Important community rights recognised include: the right to live in the forest land, right of ownership; access to collect, use and dispose minor forest produce; rights of fishing and grazing, rights for conversion of pattas or leases, right to conserve and right to enjoy customary rights. While the rules and detailed implementation guidelines of the Act are being negotiated and drafted, it can only be hoped that the principle and spirit of this legislation is retained and that adivasi communities will be able to use it for what it is meant to be – a tool to ensure that their lives, practices and culture are not subservient to the market and to powerful commercial lobbies.



Closing thoughts

This paper has put forth arguments and cases, drawing from international and national experiences to tourism's increasing role in the indigenous peoples debate. But as we acknowledge that tourism indeed is contributing to the displacement, exploitation and marginalisation of indigenous communities, there is also the hope that it might transform itself into a tool for benefiting these communities – economically and culturally – without being exploitative. When confronted with highly destructive forms of “development” like mining, dams and extractives, indigenous communities are pinning their hopes on tourism – that it can be a tool for their collective economic empowerment, and a means for promoting greater understanding and respect for their identities, culture and traditions. But will tourism development in India respond to this call? Will tourism which by its very nature is a human space - be more human and ethical? Will it be guided by its responsibility to be a steward of the peoples, cultures, and natural environment that it so benefits by? Will its relationship with communities it depends on, be respectful and harmonious or predatory and exploitative? Is it willing to be unmasked and respond to the adivasi's johar?

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endnotes

1. When used in reference to a member of an indigenous people, the noun native, like its synonym aborigine, can evoke unwelcome stereotypes of primitiveness or cultural backwardness that many people now seek to avoid. Despite its potentially negative connotations, native is enjoying increasing popularity in ethnonyms such as native Australian and Alaska Native, perhaps due to the wide acceptance of Native American as a term of ethnic pride and respect. natives. www.dictionary.com. The American Heritage® Dictionary of the English Language, Fourth Edition. Houghton Mifflin Company, 2004. <http://dictionary.reference.com/browse/natives> (accessed: July 04, 2007). In this paper we prefer to use the term indigenous people/tribals/ adivasis.
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16. Data collected from primary field investigation by Souparna Lahiri and Devjit Nandi for NFFPFW, India.
17. <http://www.incredibleindiaholiday.com/incredible-india-wildlife-holidays/kanha-wildlife-tour.html>
18. In 1995, the World Bank launched the ecodevelopment project with the Indian government. Pench Tiger Reserve in Madhya Pradesh was eventually selected as one of the loan recipients. The general objectives of the project were to protect biodiversity and ecosystems in India by motivating villagers in the buffer zones around the national parks to reduce their dependence on the forests for survival. The World Bank designed a program based upon an understanding that human populations living in wildlife conservation areas have a negative impact on the delicate plant and animal ecosystems; they must therefore be resettled outside the boundaries of the wildlife reserves and encouraged to survive without entering the forests. This course of action, it was felt, will protect villagers and their crops from wild animals and will protect wild animals and plant species from human encroachment.
19. The park is in a designated V Schedule Area – Areas identified by the Constitution of India with high percentage of tribal populations that are to be administered differently in recognition of tribal institutions and governance.

20. Id 16
21. This case is drawn from "adivasis, rights and tourism: an assertion from Nagarahole", EQUATIONS, 2000.
22. Refer the Declaration of the International Forum on Indigenous Tourism, Oaxaca, 2002 issued in response to IYE
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24. Id 12
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27. Id 11
28. Id 11
29. Id 11
30. "Tourism and the SAN in South Africa", Contours, Ecumenical Coalition on Third World Tourism, Volume 8 No ¾ November 1998.
31. There are a few initiatives in progress in India that are beginning to orient tourism development towards indigenous community needs with some even being community-owned and initiated. These include the UNDP and MoT's Endogenous Rural Tourism Project where few sites work with indigenous communities, work of NGOs in East and Northeast India towards striking a balance between cultural, ecological conservation and tourism and few village-level initiatives like in Khonoma, Nagaland.
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34. On 22 December 2004, the General Assembly adopted Resolution A/RES/59/174 for a Second International Decade, which commenced on 1 January 2005. The Under-Secretary-General for Economic and Social Affairs, Mr. José Antonio Ocampo was appointed Coordinator for the Second Decade. The goal of the Decade is the further strengthening of international cooperation for the solution of problems faced by indigenous people in such areas as culture, education, health, human rights, the environment and social and economic development, by means of action oriented programmes and specific projects, increased technical assistance and relevant standard setting activities. The theme of the Decade is: "Partnership for Action and Dignity". <http://www.un.org/esa/socdev/unpfii/en/second.html>
35. The Permanent Forum was established by the United Nations Economic and Social Council (ECOSOC) resolution 2000/22 on 28 July 2000. In this resolution the UNPFII was given a

- mandate to “discuss indigenous issues within the mandate of the Council relating to economic and social development, culture, the environment, education, health and human rights.” <http://www.un.org/esa/socdev/unpfii/en/structure.html>
36. Id 26
 37. The two references are: “The railways have a special fascination for foreign tourists who wish to experience the country both at leisure and close personal contact with the indigenous people...” and “...ecotourism must help in... in encouraging tribal and local crafts and in improving overall environment and facilitating growth of a more just and fair social order”, National Tourism Policy, Ministry of Tourism and Culture, Government of India, 2002.
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 40. Ecotourism as Market Based Conservation Mechanism, briefing paper, EQUATIONS, 2006
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A forgotten history¹

EQUATIONS

Adivasi traditions and practices pervade all aspects of Indian culture and civilization, yet this awareness is often lacking in popular consciousness. The extent and import of adivasi contributions to Indian philosophy, language and custom, despite efforts by activists and people associated with their struggles and movements, have often gone unrecognized, or been underrated by historians and social scientists alike.



Unsung Heroes of the Indian Freedom Struggle (1763-1856)

Modern Indian history portraying the freedom struggle as the central theme has not acknowledged adivasi uprisings against colonial powers. This year, in 2007, the Government of India is celebrating 150 years of the Indian freedom struggle (1857–2007), with the Ministry of Tourism & Culture taking this opportunity to promote another tourism circuit (called the ‘freedom circuit’).² The MoT has commissioned two television commercials featuring great freedom fighters, political leaders and socialists who have contributed to the freedom struggle against the British. While a series of events and rallies were planned for the year-long celebrations, the government and Ministry of Tourism has forgotten the contributions of adivasis to the freedom struggle. Media reports and mainstream history still calls the 1857 Revolt, the first War of Independence and the first people’s struggle and uprising in India. But in revisiting adivasi history, it is apparent that they were the first in the country to initiate peoples’ struggle against the colonial rule.

In that context this note attempts bring to memory and document some of the struggles in

Jharkhand, Gujarat, Rajasthan and Chhattisgarh in the 18th and 19th centuries, which clearly predate what is believed to be the 'first' war of Independence in 1857. As soon as the British took over Eastern India tribal revolts broke out to challenge alien rule. In the early years of colonization, no other community in India offered such heroic resistance to British rule or faced such tragic consequences, as did the numerous adivasi communities of today's Jharkhand, Chhattisgarh, Orissa and Bengal. What is generally known of the resistance against the British is the resistance of the 'rulers' of India against colonial aggression. There were battles between maharajas and the British; they lost and they won; but was not depicted was the resistance by the 'ruled'. What our history books do not record is the fact that the onward march of the British into the tribal tracts first met with fierce resistance by the tribals. The resistance in tribal tracts was the resistance of the 'ruled'; it was the resistance of the 'people'.

Between 1769 (first uprising) and 1947, there have been a total of 72 major uprisings against the British by tribals. The early tribal uprisings were targeted at such British policies as the takeover of natural resources, allowing the entry of contractors into tribal economic systems, imposing formal state administration, and so on. As a result, in the central Indian tract, the British created a policy of the 'partially excluded areas'. These areas were partially excluded from the formal administrative structure where the British administration was physically not present, and was rather represented by an agent of the Crown who could repeal, amend, modify, or promulgate any law in the interest of 'good governance' of these tribal areas.

The other part was the North Eastern tract, where the British could not even penetrate. So, they were called the 'totally excluded areas' for the purposes of administration. There was no administration and only nominal government. In the Government of India Act of 1935, the partially excluded areas and the totally excluded areas got reflected as two schedules in what was to be the Constitution of India with the former becoming the Schedule V areas and the latter the Schedule VI areas.

Such peoples' resistance had already begun around mid-18th century. The first uprising against the British in 1769 by the Kondhs in North Orissa and South Jharkhand. Popular stories recount how Robert Clive was surrounded by tribals, who would have eliminated this white man, but instead put Clive in one of the huge pots they used to store grain in and smuggled him in a bullock cart out of the area.

In 1772, the Paharia revolt broke out which was followed by a five year uprising led by Tilka Manjhi who was hanged in Bhagalpur in 1785. The Tamar and Munda revolts followed. In the next two decades, revolts took place in Singhbhum, Gumla, Birbhum, Bankura, Manbhum and Palamau, followed by the great Kol risings of 1832 and the Khewar and Bhumij revolts

(1832-34). In 1855, the Santhals waged war against the permanent settlement of Lord Cornwallis, and a year later, numerous adivasi leaders played key roles in the 1857 war of independence.

Adivasi uprisings in the Jharkhand belt were quelled by the British through massive deployment of troops across the region. The Kherwar uprising and the Birsa Munda movement were the most important of the late-18th century struggles against British rule and their local agents. The long struggle led by Birsa Munda was directed at British policies that allowed the zamindars (landowners) and money-lenders to harshly exploit the adivasis. In 1914 Jatra Oraon started what is called the Tana Movement (which drew the participation of over 25,500 adivasis). The Tana movement joined the nation-wide Satyagrah Movement in 1920 and stopped the payment of land-taxes to the colonial Government.

During British rule, several revolts also took place in Orissa which naturally drew participation from the adivasis. The significant ones included the Paik Rebellion of 1817, the Ghumsar uprisings of 1836-1856, and the Sambhalpur revolt of 1857-1864.

In the hill tribal tracts of Andhra Pradesh a revolt broke out in August 1922. Led by Alluri Ramachandra Raju (better known as Sitarama Raju), the adivasis of the Andhra hills succeeded in drawing the British into a full-scale guerrilla war. Unable to cope, the British brought in the Malabar Special Force to crush it and only prevailed when Alluri Raju died.



Adivasi uprising in Jharkhand

The first peoples' resistance against the British was put up during 1767–80 by the Paharia adivasis in Jharkhand. The British entered Singhbhum area of Jharkhand and tried to capture Santhal Pargana, where the Paharia adivasis resisted.

Santhals in Rajmahal hills of Dumka (now part of Jharkhand) started raising their voices in 1784. The forestlands cleared by the Santhals for cultivation, went to the hands of zamindars (landlords). The implication of this settlement was increasing tax burden on Santhals and now they had to pay both the Zamindars and British. This led to the migration of Santhals to other parts of Jharkhand, Bihar, West Bengal, Orissa and parts of central India.

The first major uprising was during 1784–85, spearheaded by Baba Tilka Manjhi (Tilka Murmu). He organized the Santhals to form the Mukti Dal (liberation group) to fight against

resource grabbing and exploitation. The year 1784 is considered as the first armed rebellion against the British and was beginning of Santhal Hul³. Baba Tilka Manjhi attacked Augustus Cleveland, the then Collector of Bhagalpur and Rajmahal with a Gulel (a weapon which is similar to a slingshot), who died later. Baba Tilka was convicted and hanged to death in 1785 for the murder of Cleveland.

By 1790, the Santhal rebellion subsided and Damin-e-Koh⁴ was established in 1824. The hill tract of Rajmahal was reserved for the Paharias while the foothills were given to the Santhals and were used for clearing jungle.

In this Damin-e-Koh, Santhals from Cuttack, Dalbhum, Manbhum, Barabhum, Chotanagpur, Hazariag, Palamau, Midnapur, Bankura and Birbhum migrated and started cultivating these lands. For many of the Santhals, it was a return to their homeland and they applied their customary laws, practiced festivals, religious functions as per their customs. Life was peaceful in Damin-e-Koh⁵. However, this peaceful co-existence of forests and Santhal adivasis did not continue for long. The intention of the colonial rule was to get lagaan (revenue) on land, which the Santhals had cleared and cultivated for years together. The immediate cause for the second Santhal uprising was the imposition of land revenue on Damin- e-Koh lands. However, it was an outcome of a reaction to the forceful imposition of sexual exploitation of Santhal women and commodification of land, people and forests by the British, the money lenders and other outsiders. The aim of the Santhal uprising was not to establish a parallel government to the colonial powers, but was against exploitation and unfair practices⁶.

The Santhal Hul reached its peak in 1855. Four brothers - Kanhu, Sido, Chand and Bhairav led the second uprising. They organized a public meeting in Bhognadih, their native village and mobilized 10,000 Santhals and called for "Hul" against British, the zamindars, money lenders and other exploiters. They decided not to attack low caste hindus and muslims as they were equally exploited by the rich and powerful. Slowly this movement spread to other parts such as Birbhum, Hazaribag and Bhagalpur and armed Santhal rebels started marching towards Calcutta, which was the seat of colonial power. Santhal youth working as labour, landless farmers and the displaced also joined this movement and the battle became fierce. First, zamindars and mahajans (money lenders) were targeted and gradually the battle was intensified against the British. Santhals defeated the British army in Payalpur and this was followed by a series of attacks on British officials. Agitated with this unexpected rebellion by an agrarian community, the British started counter attacks on Santhal civilian population and many villages were destroyed. In January 1856, Santhals were defeated by the British near Sangrampur (Bhagalpur) and this defeat was a setback to the uprising. Sido was killed by the British army, while Kanhu Manjhi was arrested in Birbhum and was later hanged. It is estimated that during the 1855 uprising, about 10,000 people, including British officials and

zamindars were killed.

With the death of Kanhu Manjhi, the Santhal uprising subsided. However, it inspired other adivasi communities of Jharkhand to revolt against the British. Some of the milestones were the Tamar revolt (1795), Bhumij revolt (1798–99), Munda revolt in Palamau (1819–20), Kol struggle (1831), Kharia movement (1860–80) Kairwar movement (1871) and the Sardari movement (1859–95).

The collective aspiration of adivasi communities to protect their resources and cultural practices was strongly reflected in the Santhal Hul and became the inspiration of Ulgulan - the famous Munda rebellion in Jharkhand under the leadership of Birsa Munda. Birsa Munda was born in 1872 in Chalkhad near Ranchi. He led an armed struggle against the British to establish the Munda Raj. Besides, he launched a social campaign against forceful conversion, alcoholism, belief in spirits and black magic prevalent among various adivasi communities. To the twin challenges of agrarian breakdown and cultural change due to growing British influence, the Mundas responded through a series of revolts and uprisings under the leadership of Birsa. The movement sought to assert rights of the Mundas as the real proprietors of the land and the expulsion of middlemen and the Britishers. Birsa was first arrested and sent to Hazaribagh jail for two years as he was labelled a suspect whose activities were likely to breach peace. After his release, his followers met him in Bortodih village and then the group had sixteen meetings across Munda areas, to prepare the ground for strategizing against the British. The famine of 1897 acted as a catalyst for the Ulgulan movement. Christmas eve (24 December) of 1899 was fixed as the day when arson, murder or attempts to murder would be carried out. Burning and arrow shooting incidents took place widely in police stations of Chakradharpur (Singhbhum district) and Khunti, Kara, Torpa, Tamar and Basia (Ranchi district). Apart from this, several German missionary churches were also attacked and burned. This was followed by an assault on the Deputy Commissioner at Etkedih, an encounter with the Commissioner and other officials in Ranchi and an armed attack on Khunti police station. This struggle reached its peak on 9 January 1900 when Munda forces attacked the British at Sail. There was a lot of bloodshed and several Mundas were killed. A search operation began and the British arrested all those involved in this uprising. On 28 January of the same year, two Munda sardars Donka and Manjhia, along with 32 others were arrested, followed by Birsa's arrest on 3 February. Birsa was taken to Ranchi jail, where he died on 9 June 1900. The arrest of Mundas and death of Birsa marked the end of the adivasi uprising against the British in Jharkhand.



Adivasi Uprisings in Gujarat

When the Santhals, Mundas, Ho and Kharia adivasi were raising voices against colonial exploitation in parts of Bihar (now Jharkhand) and Bengal, Gujarat also witnessed a series of adivasi uprisings. The first uprising was led by Roop Singh Nayak of Champaner (Panchmahal district) in 1838. Nayaks and Bhils in Gujarat were at the forefront of the struggle. Documentation of these uprisings is inadequate and receives only passing references in the Bombay Presidency Gazetteer of 1897.

Roop Singh Nayak, born in the Dandiyapur village of Jambugoda taluk (near Champaner, Panchmahal district) later shifted his base to Poili village in Narkot. His struggle was for establishing control of the Nayaks over forest and land resources, as they were in the majority. In 1838, the feudal lord of Narkot with the help of Raja of Chota Udaipur, another princely state of Panchmahals, killed Roop Singh's father. As a result, Roop Singh began his struggle against the Raja of Narkot and the British in 1838.

The construction of railway tracks that began in 1850 required large quantities of timber. The forests of Panchmahals were given to contractors to extract timber. The British had anticipated growing unrest and protest among the Nayaks of the area and with this move, besides providing higher revenues, the opening of forests also helped the British suppress the growing uprising. Taking advantage of the 1857 Revolution which was widespread in other parts of country, Roop Singh Nayak mobilized the Bhils and Nayaks of Panchmahal and led a parallel revolution. This continued till 1859. There is very little research on the details of this uprising and the devastation. Local Nayak history has it that the British arrested Roop Singh and his brother Keval Nayak and later released them. This uprising subsided for about 10 years, but was again revived when Roop Singh Nayak was joined by Jodia Bhagat, another Nayak from Vadek village (Jambugoda) and both of them spearheaded the struggle. Jodia Bhagat mobilized the Nayaks of Panchmahal against British colonial rule and the Champaran Princely state and the struggle was at its peak in 1868, aspiring to establish a Nayak Kingdom in the area.

Folklore abounds with stories of Jodia Bhagat and Roop Singh Nayak. The Nayaks of Jambugoda believe that Jodia Bhagat was a saint and had supernatural powers. Bhav Singh Nayak, one of the elder members of village of Gandhara (near Jamgoda, Pavagadh taluk) recounts the famous folklore of Jodia Bhagat.

Jodia Bhagat started his religious preaching at a very young age of 22 years. He tried to discipline the Nayak society, which had lot of social evils. He stayed in jungles, slept near bamboo trees and had divine powers. One night there was a "Dev-vani" (voice of God), which ordered Jodia Bhagat to cut a piece of bamboo. Following this order, Jodia Bhagat cut this piece and from one he made a sword and from another he made a stick, which became sources of his immense strength and power.

Both Jodia Bhagat and Roop Singh Nayak established a royal seat of Nayak in Vadek village. Roop Singh Nayak looked after political matters, while social and religious aspects were overseen by Jodia Bhagat. Both of them mutually supported each other and fought for Nayak Raj. It is believed by local people that Narkot was originally a Nayak Jagir (estate), which was captured by upper caste Rajas and feudal lords. The struggle began when Roop Singh and Jodia Bhagat attacked a police chowki (station) in Narkot. The Raja of Narkot Jagat Baria was not there, but Jodia Bhagat, Roop Singh and other Nayaks killed the thana (station) in-charge Shivlal and others. Later, they launched an attack on the Jambugoda railway station. The Raja of Chota Udaipur princely state was on a visit for hunting. The Nayaks challenged him and the Rajas of Narkot, Jambugoda and Chota Udiapur surrendered before the Nayaks. In these princely states in 1868, people believed that the British rule had ended and the Nayak Raj had begun.

In retaliation, the British formed an army with the help of Baroda's Raja Sahaj Singh Gaikwad. The British army captured Vadek and Dandiyapura and arrested many Nayaks involved in the uprising who were sentenced to 5-9 years of imprisonment. Roop Singh Nayak, his son, and Jodia Bhagat were also arrested and given the death sentence. Other Nayaks staying around Jambugoda were seen as rebels and there was suspicion about them. The Nayaks were displaced by the British from this area after these uprisings and another adivasi community called 'Rathwas' was rehabilitated in these villages. At present there is no family of Nayaks that lives in Vadek, Dandiyapura and the surrounding villages. Jalu Bhai Nayak narrates that *"the Nayaks should not stay in Vadek, Dandiyapura or Jambugoda, as they will not live in these villages for long time. We believe if Nayaks settle here, they will be killed by outsiders like British."*



Struggles in other parts of central and western India

The story of the adivasi uprising did not end with the death of Roop Singh Nayak and Jodia Bhagat. In late 19th century and early 20th century, the struggle was led by legendary Govind Guru. It is believed by local adivasis of Santrampur and Mangarh that Guru was a banjara who came from Vasia village of Dungarpur, Rajasthan. He started selling cattle in adivasi villages. Govind Guru was deeply moved when he saw that adivasis who traditionally owned land, forest and other resources did not have the basic necessities of life. He established a “Bhakti Sangthan” (religious group) from Sanmangri village and started working for adivasis. He built a temple and started his religious work from the hills of Mangarh, bordering Gujarat and Rajasthan. Many adivasis of the area became his followers and held him as their “Guru” (leader). On a purnima (full moon) day, a mela (festival) was organised where Govind Guru delivered his religious preaching. The princely states (like Santrampur) and British wishing to suppress the adivasi unity against their rule, attacked Mangarh hill and thousands of adivasis were killed. Claiming responsibility of this tragedy, Guru left Mangarh and went to Kannoji in Madhya Pradesh.

The Halba movement (1774), Bhopalpattnam movement (1795), Bhil uprising of 1818–1831 in Maharashtra, Paralkot movement (1825), Tarapur movement (1842), Freedom movement (1857), Kui movement (1859), Muria movement (1876), Rani movement (1878) and Bhumkal movement (1910) in Madhya Pradesh and Chhattisgarh remain unrecognized in the history of the national struggle. Some states like Jharkhand have taken the effort to popularize the history of adivasi, but it is limited to celebrations and establishing monuments of heroes of Jharkhand. The Jharkhand Government has named its only airport in Ranchi after Birsa Munda, but in other states and at the national levels, the struggles and contribution of adivasis to the Indian freedom struggle mostly remains unacknowledged.

As the freedom movement widened, it drew adivasis into all aspects of the struggle. Many landless and deeply oppressed adivasis joined in with upper-caste freedom fighters expecting that the defeat of the British would usher in a new democratic era.

But the British Raj’s response to the resistance of adivasis was to put in place draconian colonial laws that were to intensify their exploitation on the land’s natural and forest resources and make life miserable for the rebelling adivasi. A forest regulation passed in 1865 that empowered the British government to declare any land covered with trees or brushwood as government forest and to make rules to manage it under terms of its own choosing. The act made no provision regarding the rights of the adivasi users. A more

comprehensive Indian Forest Act was passed in 1878, which imposed severe restrictions upon adivasi rights over forest land and produce in the protected and reserved forests. The act radically changed the nature of the traditional common property of the adivasi communities and made it state property. Likewise, as punishment for adivasi resistance to British rule, "The Criminal Tribes Act" was passed by the British Government in 1871 that arbitrarily stigmatised groups - particularly nomadic tribes and adivasis (who were perceived as most hostile to British interests) - as congenital criminals.

But today, it is almost ironic that adivasis' struggles of resistance - that were so potent that they could only be thwarted by draconian laws enforced by the Raj - find little mention and recognition in mainstream annals of Indian history and the freedom struggle. The adivasis who spilled blood in the hope that the defeat of the British would usher in a new democratic era continue to resist the same colonial laws, with the exception that this time round, the resistance is within democratic and independent India.

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- 7) People of Jambugoda, Santrapur, Mangadh in Panchmahal district, Gujarat

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- 2) <http://www.jharkhand.nic.in>
- 3) http://india_resource.tripod.com/sahistory.html

endnotes

1. This note is a collation and detailed excerpts and quotations from books and articles on the subject as well as personal interviews with activists and academicians. Rather than give individual references at each point, which would be too numerous, we preferred to give a detailed list at the end of this article, on which we have relied quite extensively to put this article together.
2. <http://www.incredibleindia.org/microsite/mutiny/milestone.htm>
3. Hul stands for Santhal revolt of 1855 against the British
4. Damin-e-Koh is a Persian term meaning outer fringe of the hills, or foothills. This was established by John Pattward and Capt. Tanner. Less dense forests near Rajmahal hills were cleared and residential colonies for santhals established and they were given cultivation rights over lands.
5. "Purkha Ladake Stories of Jharkhandi Hero and Struggle" published by Pyara Kerketta Foundation, Ranchi, 2005
6. "Malgujari Aur Karz- Karu Manjhi kaa Chotanagpur mein Sangharsh" by Prabhat Kr. Shukla, 2004



part II

The betrayal of the state

A Worli story about how death came about

All religions and societies continuously try to interpret death. It is not a simple natural phenomenon that you are born, you grow and you die. This interesting myth of the Warlis is that death has come because we harmed nature.

The myth begins with the primeval flood, following which, the spirits – Ganga, Gauri, and Mahadev take the earth from the mud wasp and create hills and valleys. Then they collect seeds from squirrels and other animals. They go around planting these seeds and meet after 12 years. Because these spirits – Ganga, Gauri and Mahadev – are divine spirits and they planted trees with their own hands, nature became immortal. So, nature is growing, trees are multiplying, animals are multiplying, because there is no death. And the earth – the ‘dhartari’ – is not able to carry so many burdens. She is moaning and in pain and so she goes in search of her brother Naran who is the supreme spirit to seek his help.

When she is walking, her other brother ‘Pandu’, who is a human being, gets annoyed with her, he kicks her and she falls. Naran has already assigned various kingdoms to various spirits but the kingdom of death has not been created as yet. This issue had not cropped up at all. Naran tells Pandu that in retribution for his kicking and injuring mother Earth, we now create the kingdom of death and he will be in charge of it. So, in the notion of how death came to this planet, the interpretation is that humans harmed nature and because of this, death came about.

Story teller: **Pradip Prabhu**, in a personal interview, 2004

This 5600 yr old rock art is in the Karmagadh Reserve Forest, Raigadh District, Chhattisgarh. In neighbouring Andhra Pradesh the State Government entered into a MOU in July 2005 with the Jindal Group for a 9500 crore bauxite and mining plant. By a clever appropriation of the Samata judgement the Andhra Pradesh Mineral Development Corporation which would mine in the schedule V areas and in turn provide raw material to the smaller plant of the Jindals.



Hul to Raj

150 years of Crime against Ecology in Jharkhand

Sanjay Bosu Mullick

The Santal Rebellion of 1854, the Hul, occurred as a response to the betrayal of the promise of letting the Santals and other analogous communities to occupy Damin-i-Koh as rent free land by the colonial East India Company. But that was an apparent cause and immediate reason of the rebellion. The Santals rose against an alien civilization that turned nature into private property and man into tenants and everything that nature offers and man produces taxable. It was a conflict of civilisations. A tribe that was passing through the transitional phase of settling down as agriculturists from a hunting and swiden agriculturist stage of social life failed to understand the values of European feudalism. The Jungle States under the Mughals was happy with 'tributes' from the 'tribesmen' and never interfered into their social life in general. Now the regular 'tax' replaced the irregular 'tribute' and the colonial state imposed a legal system that replaced the tribal customs. The Santals were no more the children of nature but the subjects of the British East India Company.

The Company encouraged the Santals and may other analogous communities to settle in the forested and sparsely populated Damin with the long term design of earning revenue one day. The people settled large number of villages by clearing forests and turning the hilly tracts into beautiful paddy fields with their hard labours of years together. Now came the hay-day of earning revenue for the Company. The British let loose the notorious institutions like the zamindar, the police, the traders, the moneylenders, the lawyers and so on and so forth. The predators sucked the blood and sweat of the Santals and turned them pale till they turned back and demanded justice from their god. The god responded

in their collective dream; soon the Marang Buru, the Supreme Being, would make them all powerful to defeat the forces of colonialism – a millenarian dream.

The theme of the Hul, the collective aspiration of the people for political autonomy and cultural identity, perpetuated in the following phases of the peoples' movement. The millenarian dream passed on from Hul to Ulgulan (Munda Revolt) and then got transformed into the demand of the 'alag prant'(separate province for the tribes). Revivalist ideology was replaced by the ideology of reconstruction. 'Hundred years of anti colonial struggle' for sovereignty had to continue for half a century more after independence only to receive a 'deformed child' that the Indian nation state gave birth to as her 28th province in 2000. The new millennium made a nasty joke of the millenarian dream of the Adivasis and Mulvasis of Jharkhand! The history was repeated; Hul prompted the formation of the district of Santal Pargans for administrative convenience, struggle for 'alag Raj' resulted in the formation of the Jharkhand state truly for the same reason.

The ideology of the formation of smaller states (provinces) for better administration as opposed to the political recognition of cultural regions, under which Jharkhand has been created, has served two purposes. Firstly, it divides the Adivasis of the Jharkhand cultural region and secondly, by having two smaller states out of a contiguous cultural region, Jharkhand and Chhattisgarh, with no dominant nationality, it makes it easier for the state to exploit their rich natural resources with comfortable ease. (Munda and Bosu Mullick, 2003. P. xvi). This is an intrigue, the plot of which is very similar to that of the colonial policy of 'divide and rule'. But it is not just a copy of the colonial policy; it is in fact the continuation of it to rule the 'internal colonies'. "The 'official' Indian elite now constitute its own 'Others' in terms of continuing caste, class and gender differences within Indian society." (Jewitt, S Jhar.p. 58). Political scientists have noted that the state in post-colonial India has inherited a colonial attitude of mind from the British. (Nandi, Ashis. 1983 as quoted by Jewitt) For the British the Indians were the 'Others'; for the masters of the 'internal colonies', the Adivasis are the 'Others'.

In this paper I would like to trace the basic cause of the conflict between the state and Adivasis after independence by examining the colonial and post-colonial forest policies of the central and the state governments.



Colonial Forest Policies in Jharkhand

Before the beginning of the colonial era Jharkhand was really a 'land of forest'. The land under swidden cultivation (daha/ dhya or jara) was very common. Only in some pockets plough agriculture was introduced by the medieval 'jungle' states. But in both the cases the notion of land belonging to the king as the 'lord' paramount of the soil was absent. Community enjoyed total control over the land and the produce of the land. Forest was an integral part of the economic system. Forests were dense and full of wild animals.

The colonial forces under the British East India Company entered into the so called 'Bengal woodland' or 'Jungle Mahal', as the Mughals called it by the beginning of the 19th century. The British objective of the political control was revenue from land and timber from forests. But that was not possible without pacification of the rebellious peoples. Therefore, the British policy was marked by three elements, suppression of protests, sedentarization of shifting cultivators and the hunter-gatherers and 'conservation' of forests.

Immediately after the Hul the colonial government dispossessed the indigenous people of Jharkhand of their forest with the introduction of a government order to this effect in 1856. The Government Forest Act 1865 came into effect from May 1st 1865, regularized the process. 'This Act turned all the social common property resources into state property and alienated the masses from the ownership and management of forest.

"Colonialism made a distinction between public and private domain. While environment was placed in the former, agriculture was made a private sector activity. The partitioning of landscapes and social spheres came to characterize the large aspects of modern state formation" (Shivaramakrishnan P.80). In this process tribal places were made, not only by curbing practices like shifting cultivation but by assigning them a specific terrain which was designated the place of tribes unredeemable from 'backward agriculture'. (ibid P.81) By the 1870s, the south-western part of woodland Bengal – the emerging tribal heartland – was taking shape as a landscape where two elements of policy converged. One element worked to hasten the gradual transformation of wildlands and wastelands into an ordered terrain of fields and groves. The other element was the policy of forest conservation." (ibid P.86)

The initiative taken under the Indian Forest Act 1865 to replace the community managed forests by state management reached its goal when 'the process of state usurpation was consolidated in the Indian Forest Act 1878. The reservation of large areas of forest by the

colonial state under Reserved, Protected and Private category thus empowered the state immensely and consequently diminished the rights of the 'ecosystem people', (the adivasis and other forest dependent people), to a large extent. This changed the traditional pattern of resource use and made timber an important commodity, which in turn fundamentally altered forest ecology (Gadgil and Guha. 2000 p.85). The dominant forest structures were commonly changed from all-aged, diverse and naturally regenerating jungles to simplified, even-aged monocultures, often dominated by sal, teak and pine.(Jewitt .p. 62)

By the end of the 19th century the British rule in Jharkhand accomplished two important tasks, the suppression of protests and sedentarization of the adivasis. This achievement was followed by the adaptation of paternalistic and isolationist policy, which was reflected in the tenancy acts and administrative policies. Chotanagpur Tenancy Act of 1908 and Santal Pargana Tenure Act of 1912 were framed and adivasi dominated districts of the region were put under 'partially excluded areas' with a simple administrative system. This was necessary to keep the region under direct control of the Raj and to keep the adivasis away from the growing anti-colonial movement as the discovery of coal followed by huge deposit of iron, manganese, bauxite, etc. made the region the most lucrative land of the colony. This was true to the other adivasi habitats of the country as well.

The contradictory nature of much British policy-making was exemplified in the conflict between normalizing/dominatory aspects of British rule, and a paternalistic desire to protect the savage but noble adivasis (Jewitt, 2004, p64). The Zamindars (landlords under Permanent Settlement) always hated this and the nationalists termed it as a Christian ploy to convert the simple hearted adivais. The nationalists stood for assimilation as opposed to British unstable policy of isolation. The contradiction and complexity were inherent in both forest and tribal policy of the Raj. British tried to achieve an unachievable goal: the forest were sought to be preserved by alienating the adivasis from it and the adivasi identity was promised to be protected by severing their symbiotic relationship with the forest.



Orientalism in Post-Colonial Period

The continuation of the Orientalist attitudes in the post-colonial power structure is remarkable. Instead of casting off the shackles of the British colonialism ... "many British ideas and methods of rule have been continued by post-colonial governments, especially as India has become more and more hooked into Western commercial and consumer systems. Instead of rejecting the modernizing policies of the British and replacing them

with a more socially and environmentally sensitive forest management strategy, the post-colonial forest department actually embraced and enlarged on British policies.” (Jewitt. P. 71-72)

After independence the Indian ruling elite under caste-class combine, categorised as ‘omnivores’ by Gadgil, having satisfied its hunger of power engaged itself in satiating its thirst of wealth. Semi-feudal structure of India society refused to accept land reform (1956) and sharing of power at the village level under Panchyati Raj (1957). ‘National interest’ was the ‘log in name’ and ‘development’ became the ‘password’ to have a smooth access to the natural resources of the country for their inhuman exploitation and criminal expropriation. Public servants, police and politicians formed a nexus towards this end. Where colonialism left off, development took over (Kothari, 1988, p. 143. as quoted by Jewitt). The world of artefacts devastated the natural world. While dams and mines displaced millions of peasants and tribals, destruction of forests caused hunger and destitution. The swelling multitude of ‘ecological refugees’ (Gadgil, 2000), who constitute about one third of Indian population, were turned into sweat labourers and treated as the dirt of development. Development in Jharkhand took place under the threat of guns. Behind the repression that accompanies development lied a perception of the adivasi peasantry as physical obstacles in the drive to gain full access to land, raw materials and natural resources (Devalle, 1992, p. 104-105).

Jharkhand has been the largest producer of ecological refugees. More than 300,000 people have been displaced under the development projects; 90% of them are the adivasis. Ecological devastation has completely broken the chain of food security. According to the official estimate 10% people of Jharkhand today suffer from hunger frequently and 2% suffer from chronic hunger.

Developmental projects alone are usually blamed for the ecological destruction and consequent devastation of the tribal society. The role of the forest department in this gold rush at the cost of the human and nature was neither studied nor exposed till recently when the confrontation between the forest dependent people and the forest department could not be suppressed any longer in the central Indian states and the foot hills of the Himalayas. Chipko, Jharkhand and Narmada movements exposed the high-handedness of the forest departments and the rampant corruption in them besides challenging the forest policies of the government. Forests continue to be the largest zamindari (fiefdom) of the state and the forest official act like despotic landlords.

In Jharkhand the history of ‘crime against ecology’ may be studied in three phases. The first phase began with the British occupation of forests as eminent domain and clearing of flora and cleansing of fauna for the production agricultural surplus. In the second phase British

conservationist policy was challenged by the Zamindars during the 2nd world war and by the forest department after independence till the central government tried to revive the policy of 'conservation' in the 80s by the enactment of 1980 Act. And the third phase began after that with a series of laws, resolutions and directives aimed at completing the unfinished job of the colonial masters of legally sever all relationships between forests and forest dependent peoples, especially the 'adivasis' or Indigenous Peoples.

The Zamindars and the forest officials took full advantage of the unstable political conditions before independence, marked by the Quit India movement and the Second World War, and unsteady tribal and forest policy frameworks after it for about half a century beginning from 30s to the beginning of the 80s to convert natural woods into artificial wealth. The British government during the fag end of its rule decided to take over the protected forests, meant for the use of the villagers, from the custodianship of the Zamindars by enacting the Bihar Private Forest Act of 1946 (III of 1946). It was 're-enacted as Bihar Private Forest Act, 1947 (Act IX of 1948) with certain modifications' after independence. However, that turned out to be a boon in disguise for the officials of the forest department. They cleared what was left out by the Zamindars as a gift of independence and reward to their loyalty to the British Raj. When Zamindari was abolished and operation of the Land Reform Act (Bihar Act XX of 1950) was initiated all these forests became vested in Government and was constituted as Protected Forests (PF) under the Indian Forest Act of 1927.

The forests belonged to the Mundari Khuntkattidars (adivasis belonging to the Munda community having a special status under the Chotanagpur Tenancy Act 1908) continued to be considered as Private Protected Forests and their management thereof was taken over by the forest department. However, the Mundari Khuntkattidars lodged a strong protest against this injustice on the ground that the Mundari Khuntkatti tenure was quite different from the zamindari tenure. They are neither tenant nor tenure holders and they collectively own the forests within the boundary of the village. However, it yielded no positive results and the forest department virtually took away the Mundari Khuntkatti forests from the Mundas with the plea of managing their forests 'scientifically' and the promise of sharing the profit, a promise they never kept. In 1984 the Roy Burman Commission visited these villages and found to its utter disbelief that miles after miles of forests were denuded mercilessly by the forest department.

The destruction of the eco-system for selfish motive that began in the British colonial period received a diabolic dimension in the post colonial era of 'development'. Only 14% of the land of Jharkhand today is covered by mostly degraded forests.

During this phase in the 70s Jharkhand witnessed a fierce conflict between the adivasis and the forest department. Areeparampil noted four basic reasons for this. They were, encroachment by the forest department on adivasi villages and on their customary rights on forests, exploitation and harassment of adivasis by forest officials, commercialization of forests and resultant pauperization of the adivasis and looting and destruction of forests by contractors in collusion with forest officials (Areeparampil 1992). Conflicts of the same nature in other parts of the tribal India revealed their long lineage. Local opposition to commercial forestry dates from the earliest days of state intervention (Gadgil and Guha, 2000, p. 85). Scholars observed the political edge of such movements. In Jharkhand it was combined from outset with a radicalization of the movement for a separate Jharkhand state (Sengupta, 1982, Devalle, 1992, Corbridge, 2004) and elsewhere in the central tribal belt the issue was actively taken up by the Revolutionary Maoist groups (Gadgil and Guha, 2000, p. 85). In Jharkhand adivasi movements for land and forest were always a part of their autonomy and identity movement. They not only criticised the anti-people policies of the government but at the same time presented the demand of autonomy as the means of resolution of the crisis.

The government, however, wanted to deal with the situation by passing a more stringent law that would give the forest department absolute control over the forest land. The Draft Forest Bill of 1980 invited a country wide opposition and finally the state had to change its strategy. Orientalism came back in a new form: the Joint Forest Management. This third phase of our study reveals the revival of the colonial dichotomy. But as the colonial policy of tribal paternalism and forest conservation had an ulterior motive the JFM was also conceived with a selfish intention. The Forest Conservation Act 1988 is often seen as a departure from the 1980 Act, a revolutionary step forward. In fact it complements the Act. The call for people's participation in forest conservation is not a gesture of goodwill to the people but a strategy to use people, whom the other Act deprives of their forest rights, under compulsion.



Neo-orientalism in Forest Management

JFM policy was adopted by the Bihar Government way back in November 1990 when a large tract of forest land was already degraded and the forest department became completely alienated from the people. (Government of Bihar admitted way back in the 70s that out of 29,232 Sq. Km of declared forest 10,000 sq. km was degraded (A Draft Perspective Plan, Bihar – 1978-89). Presently the Jharkhand Government admits that only 18-19% of the total state land is under forest cover (Vision 2000, Jharkhand Government) as opposed to the

conflicting claims of 27% by the forest department.) Therefore, it was not surprising that the progress of the programme staggered with a ridiculously negligible average of 17 JFM community organizations formed every year. However, the expectation was quite high. In an important policy shift, the Indian national Forest Policy of 1988 underscored the need to involve local communities in the management of forests; and regeneration of forests and alleviation of rural poverty were the expected outcomes (Sanjay Kumar, 2004). With a view to assure the involvement of the forest peoples 33% of the total net profit was promised to be shared with them. The programme was hailed as a revolutionary new scheme (Jewitt, 2004).

After the formation of the Jharkhand state, the new state government reinitiated the project. The Government of Jharkhand has a new Joint Forest management Resolution dated September 27, 2001, that superseeds the Government of Bihar Resolution on the same issue (GoB Resolution No. 54790 – 5244 V.P. dated 09.11.90). The main objective of the resolution is to establish JFM committees for the protection of the Reserved and Protected Forests of the state and for betterment of the villagers living in those forests.

The Jharkhand Resolution begins by accusing the forest dwellers as the destroyers of the forests. It allures them by promising 90% of the net profit made out of the sale procedure of the forest producers including timber and demands responsibility to the protection and regeneration of forests in return. Forest Protection Committees will be formed in the villages, the portfolios of the secretary and the treasurer will be held by the officials of the Forest Department. The members of the committee will be given the policing power and authority to collect fines for small offences. A detailed analysis of the Resolution has recently been made by the UNDP. It is made clear that the sole purpose of the JFM is to re-establish a centralised power in the forests. 90% of the profit sharing is a hoax because it is the net profit, which will be taken into account and after the colossal expenses of the Forest Department how much would be left for the distribution to the people is anybody's guess. Moreover, people will not be in a position to decide the price of the forest products and will have no say in the money management. It violates the Chotanagpur Tenancy Act of 1908 and Santal Pargana Tenancy Act of 1912. The most dangerous consequence will be the creation of a division within the village community and between the neighbouring villages on the issue of stopping people's access to the forest.

The World Bank's cleaver support to the notion of the JFM in the garb of Participatory Forest Management reveals another dimension of neo-orientalism.



Legislation on Forest Rights

Indigenous Peoples' struggle for autonomy and identity throughout the colonial and post-colonial period demanded the state recognition of the integrity of their culture and nature. As forest is inseparable from their existence the tribal and forest policies of the state could not be framed on incompatible premises. However, this demand was never honoured by the state. The present Forest policy and the Draft National Policy for the Tribals (DNTP) are no exception to this rule. While the former holds a conservative ideology and promotes eviction and isolation of the IPs from the forests, the later does not even talk about the forest ownership rights of the people.

The Panchyati Raj Extension Act of 1996 in Scheduled Areas denies the ownership rights of the IPs in the village forests. Moving a step further the Jharkhand state Panchyati Raj Act of 2001 has taken out even the rights over the minor forest produces from the jurisdiction of the gram sabhas, which was granted in the central act.

The internal contradiction of the orientalist ideology has recently been exposed on the issue of the placing of the Schedule Tribe and Forest Dwellers (Recognition of Forest Rights) Bill 2005 in the last Budget Session of the Parliament. The Bill was the outcome of the ruling UPA government's promise to legalise the land rights of the forest dwellers as it was spelt out in the Common Minimum Programme. While the liberal section of the government under the leadership of the Prime Minister himself supported by the Left parties is willing to redress the age-old grievances of the forest dwellers the conservationist lobby strongly the supported by the forest department is bent on driving them out of the forest. While the government admits "The rights of forest dwelling Schedule Tribes who are inhabiting the forests for generations and are in occupation of forest land have, however, not been adequately recognized so far resulting in historical injustice to these forest dwelling Schedule Tribes" (Ministry of Tribal Affairs, GOI), the wild life lovers and the dominant section of the forest officials feel that if such rights are given the forest dwellers, especially the adivasis, would destroy the wildlife and denude 16% of the forest in the wink of an eye! In the compromising formula the proposed Bill suffers the deletion of the forest dwellers other than the Schedule Tribes who would now continue to be the victims of the 'historical injustice'. Even the fate of the Schedule Tribes is now uncertain as the government have been forced to stall the process of enactment by not presenting the Bill in the Budget session of the Parliament.

The neo-liberalism under globalization has found a great ally in orientalist ideology. However, the struggle continues. Forest rights movement in India, in general, and Jharkhand, in particular, have been able to make it a national issue. The forest department that has so far carried the colonial legacy most obediently will have to recast itself in the new mould of democracy and social justice. The neo-liberal threat to the forestry sector can only be dealt with by recognising the forest dependent people's rights over the forests, both ownership and management. Until then the struggle will continue; the flame of Hul is inextinguishable.

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Orissa - Making mockery of democracy

Debaranjan Sarangi

John Perkins in his book 'Confessions of an Economic Hit Man' said *"If an economic hit man is completely successful, the loans are so large that the debtor is forced to default on its payments after a few years. When this happens, then like the mafia we demand our pound of flesh."* When Naveen Patnaik went on to become the Chief Minister of Orissa in 2000 during National Democratic Alliance (NDA) government in the centre, AES Corporation of US and DFID of UK governments were major players in the economy of Orissa demanding the pound of flesh of people of Orissa.

The impact of globalisation was becoming even more visible with DFID literally playing the role of a philosopher and guide to Naveen Patnaik's government and reform became the order of the day. Following suit to Andhra Pradesh, Orissa privatised its power sector in 1999 making all the contracts going in favour of AES. Suddenly the meter bills of the private electricity consumers shot up in the state. The impact of globalisation was becoming glaring as nearly ten thousand posts in government departments were abolished 'due to lack of funds'¹. The private companies flourished in the state as the government relaxed many measures for them to function smoothly. This can be seen the way the government relaxed a tax amount of Rs. 4 crores due from Coca Cola Company in 2003² at a time when the loan index in the state was on the increase. The loan taken by the state escalated from Rs. 24,000 crores in 2001 to Rs. 32,000 crores in 2004 and is expected to reach Rs. 72,000 crores in another ten years.

Aplenty with natural resources and minerals, Orissa is home to highest percentage of India's total deposits of chromites, bauxite, graphite, manganese ore, and dolomite; fourth in case of coal and fifth in case of iron ore deposits. There have been proactive steps by the Orissa government to put this rich preserve on sale by inviting industrial houses to invest in the

state. As a result, Hindalco (Birla group), Alcan (Canada), Vedanta (UK), BHP Billiton (UK), Rio Tinto (UK) etc. with an investment of nearly Rs. 53,000 crores are already in the state to extract a total deposit of 7330 lakh tons of bauxite in next 75 years. Likewise, TISCO, Vedanta/ Sterlite, Bhusan, Jindal, Essar, Mittal, BHP Billiton (UK), Rio Tinto (UK), and POSCO (South Korea) have been contracted for extraction of 35,670 lakh tons of iron ore with an investment totalling one lakh and thirty thousand crores of rupees in the next 45 years. There are companies queuing up for permission to take manganese and coal. At this rate, the state's rich mineral deposits will be completely vanished within no time.

The new Industrial Policy brought forth in September 2004 provided tax relaxation in the form of entry tax, sale tax and other concessions to nearly one thousand crores of rupees each year for every ten thousand crores foreign investments in the state with a validity of 10-15 years. Passing of Corporate Farming Bill in 2006 paved the way for multinationals to amass huge areas of land in the name of farming. For example, BHP Billiton of Australia has already applied for one lakh hectare of land in Koraput district for bio-plantation and Monsanto is vying for land in Bolangir district. The state government has not even spared water from privatisation. The Water Privatization Bill, 2003 promised the distribution of water rights of towns and cities to private companies notwithstanding numerous examples of disaster caused by privatisation of water resources in other places such as Bechtel in Cochabamba in Bolivia, Vivendi in Delhi, and Seonath river in Chhattisgarh.

This government of Orissa is seriously thinking to put, on the lines of Western Australia concept of the 'State Agreement Acts', "mining land" in revenue records to escape from the statutory requirement of "consultation" with gram sabha under the Panchayati Raj Extension to Scheduled Areas Act (PESA), 1996 and also to keep such areas in forest out of the purview of the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006. The seriousness of the government could be gauged from the fact that this issue was discussed in the Mining Summit of international mining corporate organised by FIMI held in February 2006 in Bhubaneswar, Orissa.



Repression by an elected government

The heavy inroad of projects into the state is bound to have high scale of displacement of people. In a conservative estimate, nearly 2.5 lakh families are likely to be displaced in the immediate future if the 46 projects for which MoUs have been already signed are implemented. Any form of resistance by the people in the past has faced repression by the

state. This is evident from the recent incident in Kalinga Nagar where 13 tribals died in the police firing on 2 January 2006 and 1159 are living in constant fear of getting arrested on charges of 'obstruction to local police while performing their duty anytime as they resisted the land acquisition by the Tata project. In another incident in Kalinga Nagar itself, police lathi charged the groups of people opposing Maharashtra Simlex Company setting up its unit, and 26 tribals, mostly women, were sent to jail on 9 May 2005.

The repressive state action is continuing in Kashipur block of Rayagada district since 16 December 2000 when three tribals from the region died in the police firing in Maikanch. Their crime was that they were opposing land acquisition by private companies. Fifty two tribals were arrested in one year as they resisted the setting up of the refinery by UAIL (a joint venture of Alcan of Canada and Hindalco of India). The state uses the forces at its command - the C.R.P.F., Indian Reserve Battalion, Orissa State Armed Police and so on to unleash terror on its own people. Terror continues to prevail in the region as the state goes about its repression agenda.

People in Lanjigarh block have been opposing the forced land grabbing by Vedanta Alumina Company of UK for bauxite mining for last two years. The company has engaged private security officials to use various means to stop any form of opposition. In last two years, three tribals have been killed by these security officials and drivers of the company. Although it is an open truth that these people have been killed by the personnel attached to the company, the police have refused to lodge any complaints of murder. Likewise, the police picked up 9 people in April 2006 when local residents opposed POSCO of South Korea to do its survey work in Paradip area of Jagatsinghpur district. The situation in Paradip is grave, more so because the positions of Superintendent of Police and the District Collector in Jagatsinghpur district are intentionally filled by the same persons who were responsible for police firing and state terrorism in Kashipur not so long ago, to pave the way for POSCO. Jaswant Jethwa, IPS, was the one who had ordered the police firing in Maikanch in 2000 killing three tribals and Pramod Meherda, IAS, commanded state terrorism in Kashipur of Rayagada district in 2005 as the district collector.

Along with paving the way for big companies to extract the rich natural heritage, the state government has also cleared many sponge iron factories. There are around 130 such factories in Mayurbhanj, Keonjhar and Sundergarh districts itself and nearly 50 of them are illegal. In 2005 itself, 64 sponge iron plants were registered and 18 more are in the pipeline waiting for clearance with many operating with no clearance. Clearance procedures and public hearings are unheard of in these areas despite the fact that the emissions from these plants contain dangerous pollutants like cadmium, nickel, hexavalent chromium, arsenic, manganese and copper contaminating water and air with an adverse impact on the crop

and peoples health. The State Pollution Control Board prefers not to perform its duty. The contractual labour system does not ensure any security to those who work in these plants risking their lives every single moment. The complaints regarding compensation over death also has not moved the labour cell to act. No measure of opposition has gone without police action and brutalities. For example, police overpowered a gathering of over 4000 villagers in Kuarmunda in Sundergarh district with lathi charge and arrested around 118 people including young boys and girls and women on 24 March 2006. The villagers were protesting against the setting up of Nepaz (Adhunik Metallic) sponge iron factory in Kuarmunda. Protests have been on in Sambalpur and Jharsuguda districts as well.

In December 2005 police resorted to lathi charge and 26 people were arrested on the spot while local people of Dhenkanal district were opposing construction work of Bhusan steel company. Last year on 11 May 2005, villagers faced police violence and 70 people were picked up, beaten, and tortured in the police station because they were opposing the laying of a foundation stone of the dam project in Lower Sukhtel in Bolangir district. The dam project in Lower Sukhtel is meant to ensure water supply to a bauxite mining company coming near Gandhamardan hill in Bolangir district. In a similar event in Nuapada Sanctuary last year, 18 tribals were arrested for refusing to accept the orders of eviction by the forest department.

The recent upsurge of peoples' resistance to invasion of companies in their territory especially after police firing in Kalinga Nagar has perhaps led the Orissa government introduce a resettlement policy. As per its provisions, 'consultation' not 'consent' of the gram sabha is binding for projects involving displacement of people, but it is silent about the amendment of Orissa Gram Panchayat Act in the same light. It speaks about direct negotiation of land losers with the company but there is no provision of land against land or at least job against land as compensation; no provision for landless families and for oustees. The policy clearly says that force will be used if local people do not accept the compensation. This essentially paves the way for more incidents like police firings in Kalinga Nagar and Maikanch in the future.

The government claims to create 50,000 jobs if all the projects under the 46 MoUs, which mostly cover the tribal belt of the state, are implemented. This is the reason why the state is now categorising all anti-big project struggles and their leaders as anti-nationals, extremists, naxalites, and so on. The irony is that the protests or resistance or opposition carried out against the projects for their lives and livelihoods are no way illegal, anti-state, inflamed by political parties. Yet, they face the threat of being punished for going against the state. The ruthlessness of the state on the people in the struggle is already visible as the force is used disproportionately and indiscriminately. Their crime is that they are fighting for their own

resources which they have preserved and managed for generations.



Constitutional rights are in jeopardy

"All MNCs want a particular type of government - repressive, promoting ethnic conflict, weak rule of law, endemic corruption, poor labour legislation, low environmental standards, and no restriction in name of human-rights violations" wrote David C Korton in his famous book "When Corporations Rule the World". Naveen Patnaik in his six years as chief minister has created a favourable environment to the MNCs –such as adopting a single window policy for quick clearances of projects above Rs. 500 crores investment, relaxing environment laws within the state, making the Orissa State Pollution Control Board totally dysfunctional and so on. With an almost defunct Orissa State Human Rights Commission, the police resorting to more violence than peace and an extremely pro-corporate administration are assured to welcome big corporates.

As per the government report, work is in progress in 10 projects out of 46 projects for which MoUs are already signed. As many as four out of ten have flouted many laws to carry out their work. For example, forest laws are violated by Vedanta in Lanjigarh, environment, mining and forest clearances are not taken by UAIL in Kashipur and Tata in Kalinga Nagar, Bhusan steel does not have gram sabha resolution and Sterlite in Jharsuguda did its public hearing program in presence of heavy armed police and private goons. In spite of such violations by the big corporates, the work is progressing every single day in these places except in Kalinga Nagar.

Lawlessness and rampant corruption is the order of the day in the state. The ruthless distribution of licenses for liquor shops supposedly to earn revenue worth Rs. 10 crores has resulted in tragic deaths of around hundred people in last two years. Even more tragic is that no concrete action has been taken to punish the guilty. Big shopping complexes and corporate offices are constructed by demolishing the slums in the name of cleaning the cities. Rehabilitation of the slum dwellers is not even considered. Permission to Tata's iodised salt against the interest of local salt farmers, protecting prawn mafias against the interest of traditional fisher folks of Chilika Lake and retrenchment of thousands of contract workers to make way for the MNCs speaks of the real intention of the government. Can the government say there were no kick backs involved in all these developments? This, from Naveen Patnaik, who promised "corruption free and good governance" to the state in his second term as chief minister.



No concern about real problems of the state

The interest of the government does not lie in solving the problem of the state. Resources such as land are still in possession of a few. For example, in Lanjigarh there are cases where the land of an entire village belongs to one person. For people in Kalinga Nagar of Jajpur district, the wheel of time seems to have stopped in 1928 as no land patta has been given to original land owners since then. As a result, most of the personal land is shown in land record as government land in the area. In Kashipur area of Rayagada district, starvation deaths occur specifically in rainy period due to shortage of food and lack of irrigation for second crop. With the increase in extraction of minerals by companies, the perennial sources dry up, and with scanty rainfall people are literally left high and dry. Suicides by farmers in Bargarh, illegal land grabbing by the small miners in Sundergarh and Mayurbhanj, custodial deaths and increasing police atrocities do not seem to be perturbing enough for the government. It is perhaps not a coincidence that custodial deaths, four in a row (Bhubaneswar to Kuchinda), and torture of innocent people by the police have intensified, ever since the home department has been in the direct charge of the chief minister.

The BPL rate in the state has gone up from 36% in 1993-94 to 44.6% in 2004-05. Of greater concern is that 73% of the 22% tribals in the state figure in those below the poverty line. This is despite the fact that most of projects in Orissa like Hirakud dam, Indravati dam, Rourkela Steel Plant, NALCO bauxite mines and plant, HAL plant are situated in the tribal dominated districts promising a better and brighter future to its people. In the last 25-30 years of these developments, non tribals have taken over 54-56% tribal land leaving the tribals with almost nothing. Frequent failure of crops, recurrence of drought and increasing debt from private finance have forced around 30% dalits to sell their land during 1961-91. Once the owners of land, all these people now live as daily wage labourers. The projects, for which MoUs are already signed, are also coming up in the tribal hinterland. The status of education, health and other services is dwindling with infant and maternal mortality rate in the tribal areas scoring the highest in the state.

Instead of addressing these grievous problems the government is relying increasingly on brutal force to silence people's wrath. Any kind of organised resistance by the people against the atrocities, face the danger of being branded as naxalite activities. Even in this, the government stands to gain, as the state is allotted additional aid to address the naxal problems. Orissa is the largest recipient of central aid to counter naxalism. In last two years the state government has already received two battalions of Indian Reserve and CRPF with the potential of getting another with the cooperation of the central government.

It is futile to expect anything from an opposition comprising of Congress, CPI, CPM, and JMM as they neither take a clear stand against entry of corporate nor criticise the undeclared ban imposed on all mass organizations. The Kalinga Nagar incident created some hue and cry for sometime and ultimately none of them could be seen anywhere. When the state, governed by mafia, corrupt politicians and corporate executives, is paving the way for an undemocratic and unconstitutional process, where is the voice and space to speak out?

endnotes

1. The Government of Orissa entered into an MoU with the World Bank in 1999 for Medium Term Fiscal Reform Program (MTFRP). One of the conditions in this loan was downsizing state administration which led to drastic cuts in jobs.
2. The order of the Supreme Court of India in 2005 disallowed such incentives to beverages and fruit juices companies. The cabinet has decided now to amend its Industrial Policy of 2001 to eliminate such incentives from the policy itself.



What has statehood given the adivasis?

Case studies of Jharkhand and Chhattisgarh in the context of
adivasi rights and aspirations

EQUATIONS



Statehood and adivasi aspirations

The birth of the state of Jharkhand, carved out of Bihar on 15th November 2000 was an outcome of a prolonged struggle of adivasis for protection of their rights over natural resources. The Jharkhand movement started with the organisational activities of the Chhotanagpur Unnati Samaj (CUS), founded in 1921, and subsequently of the Adivasi Mahasabha, founded in 1939 (later renamed the Jharkhand Party). The CUS submitted a memorandum to the Simon Commission as early as 1928 demanding a separate Jharkhand state. This demand was intensified after the country's independence, with Jaipal Singh, leader of the Jharkhand Party, placing this demand in Parliament in 1953. The movement's original demand was for a state with 16 districts of south Bihar's Chhotanagpur and Santhal Pargana regions. This was not simple as Bihar drew about 2/3rds of its revenue from its mineral rich southern region. The Jharkhand Party also wanted to include three contiguous, tribal-dominated districts of adjoining West Bengal, four districts of Orissa and two districts of Madhya Pradesh. However, in the years that followed, the Jharkhand Party slowly lost Assembly seats and eventually ceased to exist as a distinct party.

The quest for statehood began to pick up again in 1973 with the formation of Jharkhand Mukti Morcha (JMM). By 1985, JMM occupied 13 seats in the Bihar Legislative Assembly. The All Jharkhand Students Union (AJSU) was formed in 1986 and the Jharkhand Co-ordination Committee (JCC) in 1987. After seven decades of struggle, the dream of a separate state was

fulfilled when the Indian Parliament passed the Bihar Reorganization Bill on August 2, 2000. On 15th November 2000, the birth anniversary of Birsa Munda, Jharkhand was declared a new state – its formation a great achievement for the adivasis of Chhotanagpur, Santhal Pargana, and Singhbhum¹.

The struggle for Chhattisgarh is very similar. Like Jharkhand, the demand for a separate Chhattisgarh state was first raised in the early 1920s. Unlike Jharkhand which had a well organised movement, in Chhattisgarh there were protests with mass support but these were limited and sporadic. When the State Reorganisation Commission was set up in 1954, the demand for Chhattisgarh was placed. It was in the 1990s that the demand of statehood gained momentum and the Chhattisgarh Rajya Nirman Manch, a state-wide political forum was formed. The Late Chadulal Chadrakar led this forum, organising several successful region-wide bandhs and rallies all of which were supported by major political parties including the Congress and the Bhartiya Janata Party (BJP)². On 18th March 1994, a resolution demanding a separate Chhattisgarh was tabled and unanimously approved by the Madhya Pradesh Vidhan Sabha. The creation of Chhattisgarh is a complex interplay of a combination of factors that paved the path for a separate state. The long standing demand and the movement for Uttarakhand and Jharkhand which led to the acceptance of separate states for these two regions, created a sensitive environment for the separate Chhattisgarh demand. Draft bills were tabled and approved in two MP state assemblies and in the houses of parliament. The President of India gave his consent to the Madhya Pradesh Reorganisation Act 2000 on 25th August 2000 with the Government of India subsequently declaring Chhattisgarh a separate state.

As both Jharkhand and Chhattisgarh enter their 7th year of statehood in 2007 – an occasion for celebration - the basic question remains – to what extent has statehood served the aspirations of the adivasis? Has it reduced their deprivation? Has it accorded them more rights? Has it improved their quality of life and increased their influence?



Jharkhand – Chhoti Munda's dilemma

"Purti brought his wife and kids from Chaibasa to Palamau, cleared the forest and settled a home. Suddenly one day, many kinds of people- White- Bengali- Bihari – appeared and evicted him from his home. His spirit was quite broken. Why does coal or mica appear if he breaks ground? Why do Whites-Bengalis- Biharis appear right away? What is the reason? However remote the place he travels to, something will

come out from underground, immediately a big settlement will grow there. His Mundari world will shrink. He does not want anything after all. A small village"

Mahasweta Devi's "Chotti Munda and his arrow", English translation, published 2002

Jharkhand is one of India's most mineral-rich regions. It accounts for 35.5% of the country's known coal reserves, 90% of its cooking coal deposits, 40% of its copper, 22% of its iron ore, 90% of its mica and huge deposits of bauxite, quartz and ceramics. Jharkhand has had a long history of exploitation of these resources by dikus which is how outsiders or non-advasis are referred to in the local adivasi language. As early as the beginning of 19th century, regions which today are in Jharkhand witnessed dikus taking over control of natural resources and depriving adivasis of their resources and share of benefits. Today colonial powers and money lenders have been replaced by big industries and infrastructure projects which exploit, destroy and make adivasis refugees of modern development.

Displacement and land alienation in Jharkhand by Major Projects

Project	No. of villages	No. of people displaced	Land acquired (in acres)
Netharhaat field firing range	245	235000	625000
Koel Karo project (dam)	250	250000	66000
Shankh dam	208	46694	19000
Chandilya dam	120	6773	43500
Icha dam	5600 families	28000	21000
Mayurboli, Majhan and Madira dam	18936	94680	37645
Central coal fields	32751 families	163755	120300
Eastern coal fields			80000
TISCO	7000 families	35000	338496
HEC	12990 families	64950	9200
Bokaro steel plant	12487 families	62435	34224
Suvarnarekha dam and hydal power	68400 families	342000	85000
Tenughat project	76300	381500	97843
Total		1,710,787	1,577,208

Source: "Bade Khadan, Bada Chor, published by BIRSA, Ranchi, 2004

Most of the projects listed above were in progress before Jharkhand was declared a separate state. The formation of a separate state served to accelerate this process. Out of 13 major projects leading to displacement, 12 projects are owned by either the central government, or the Jharkhand government.

The Jharkhand Industrial Policy 2001, one of its first policies declares unambiguously *“The state government firmly believes in maximising capital investment in the state for its accelerated economic development and generation of employment opportunities. The state government is committed to create an environment conducive to growth of industries in the state”*.³ Recommendations like creation of land banks in every district and industrial areas to make available the required land to potential investors to overcome the delay in land acquisition process, is the thrust of the policy.

The impact of this Industrial Policy can already be seen in the state. The first major move of the government after enactment of this policy was land acquisition for a joint venture between the Punjab State Electricity Board and Eastern Minerals and Trading Agency through a venture company called PANEM. This project, approved by the central government is proposed to acquire 13 square kilometres of land of 9 villages of Pachwara Panchayat, Santhal Pargana district. This project will impact 50,000 adivasis. In return for the land, PANEM has offered a compensation package of Rs 50,000 per acre. This is a clear violation of the Santhal Pargana Tenancy Act, which disallows selling or acquisition of land to non-tribals, without permission of the gram sabha. In this case, land was acquired under the Land Acquisition Act, a central legislation without specifying the “public purpose”.⁴ In 2003, a petition was filed in the Ranchi High Court challenging this by a group of activists and political leaders.

Sidhheshwar, an activist working with Gram Ganrajya Parishad, Jharkhand states: *“There are 45 Memoranda of Understanding (MoU) that have been signed with various mining and industrial houses since 2000. It is expected that about 55,000 hectares of land will be taken away from adivasis”*

Jharkhand seems to be poised for large scale confrontation in response to 45 MOUs worth approximately 170,000 crore signed by state govt with various iron and steel companies including big names like Mittal, Jindal and Essar. For instance in 85,000 hectares of Saranda forest division (the Saranda reserve is the largest Sal forest reserve in Asia) of Singhbhum region of Jharkhand, about 9,300 hectares of forest land has already been given on mining leases. Mittal Steel has applied for 8000 hectares of land in the same forest, for proposed investment of 40,000 crores, while the Tata’s have applied for a lease for 4,800 hectares. This means nearly 21,000 hectares of rich forest will be gone to mining companies.⁵

It is not only private domestic and international players who are competing for mining leases in the state. There are examples in Jharkhand where even public sector units have acted irresponsibly and taken over forest resources. The 21 coal mines - Central Coal Fields (CCL) in Hazaribagh Eastern Forest Sub Division have taken over an estimated 2077 hectares of forest land. The Supreme Court in its order (202/95 in 1996) asked CCL to stop operations in these forest lands, but according to the Forest Department, illegal mining by CCL still continues.⁶



Chhattisgarh: adivasi state – sarkari resources

The mineral wealth of Chhattisgarh - diamond, gold, iron-ore, coal, corundum, bauxite, dolomite, lime, tin and granite has always been a centre of focus of the government and private companies. With 44% of the state's land under forests, it accounts for 12% of India's forests.

Industrialisation, dams and mining are the major factors contributing to the land alienation of adivasis in Chhattisgarh. The Balladila Iron Ore Project (BIOP) in the Bastar region was the first major project impacting several adivasi communities. The project led to the forced migration of Gour Maria and Hill Maria adivasis into more interior parts of the district, while the influx of the immigrant population into Chhattisgarh increased. In addition, water being used for mining purposes, pollution of water bodies and loss of forest cover were impacts on natural resources. The construction of Indravati and Bodhghat Hydel Power Project to meet power needs pushed by industrialisation and the declaration of Kortu wildlife sanctuary in the name of environmental protection displaced 16,000 Maria Gond families from their ancestral homelands.⁷

Phagu Ram Vatti, a Gond from Bastar says

"Don't carry your bows and arrows to the forest. All animals are "sarkari" (related to state). They will get scared. Yes my people listen to one more thing! The forest belongs to the state, rocks underneath belong to the state, so don't dig the land without asking the government. Before you die put an application for digging your grave. Or else they will not leave you in peace even after your death. Everything around you is sarkari. Only the hands of the adivasis are empty and real owners have become beggars"

Like Jharkhand, soon after its formation in 2000, the first policy document brought out by the Chhattisgarh government also was the Industrial Policy 2004-2009. Its focus was *"to attract industrial investment in the state, the policy attempts at providing necessary*

infrastructure for investment, reducing the cost of production for the investor and ensuring an investor friendly administration”⁸

The Madhya Pradesh government had already paved the way for mining and given a lease to the Jindal Steel and Power Limited (JSPL) in 1996-97. In 2000, coal mining started in Tamnar area which was the captive coal field of JSPL. Land acquisition in 52 villages from Tamnar (district / area), which falls under the Schedule V area, took place. Ignoring the resolution of 52 gram sabhas, the state government aggressively pushed the land acquisition, violating provisions of the PESA Act. Under ‘public purpose’, the government favoured a private party for private profits. JSPL is now planning an expansion in Raigarh. The initial investment of JSPL was Rs 100 crores. Its expansion plans are, interestingly, 10 times more, to the tune of Rs 1260 crores.

These “plans for development” are to be implemented in a state where 32% of the state’s population is tribal, Dantewada has the highest concentration with scheduled tribes accounting for 79% of the districts population, followed by districts of Bastar (67%), Jashpur (65%), Surguja (57%), Kanker (56%), and Mahasamund (28%). The proportion of families below the poverty line in Dantewada is 79%, matching the percentage of tribal families.

Within a few years of its inception in the year 2000, the state of Chhattisgarh entered into 53 MoUs with international and Indian companies. According to official report, 9,620 hectares (23,774 acres) of land is already under the process of acquisition.⁹

All the large cement producers have a significant presence in the state, including AV Birla Group (Grasim Industries), Ultratech Cemco, Gujarat Ambuja Cement, ACC and Lafarge. Metals and mining operations in the state include Essar Steel, Jindal Steel and Power Ltd, South Eastern Coalfields Ltd, and others. Plans for new or expanded steel and aluminium plants in Chhattisgarh that would require land acquisition have been announced by SAIL, Jindal Steel, Monet Ispat Ltd, Visa Industries Ltd, Bhushan Ltd, Sanvijay Rolling & Engineering Ltd, BALCO, a part of the Vedanta Resources Group, Bajrang Power and Steel Industries Limited, SKS Steel Limited, Raipur Alloys & Steel Limited, and Ind Synergy Limited.¹⁰

Subsidiaries of the giant global U.S. AES Corporation are setting up a coal-based power plant in Chhattisgarh and will undertake coal mining for captive consumption. AES has been condemned for environmentally abusive projects from Uganda (the planned destruction of the Bujagali Falls) to Panama (rainforest destruction). In Argentina, AES claims that under international law a “sweetheart” deal it had with a prior (and now universally acknowledged to be corrupt) government, cancels the nation’s laws.

It has been reported that six companies seek the state's diamond resources, led by the international giants De Beers and Rio Tinto. Many of these plans would require strip mining.¹¹



Protecting adivasi rights? Disregard of the PESA

The 73rd Constitutional Amendment Act, which came into force on 24th April 1993, is a significant milestone in local self-governance. The Act conferred constitutional status to panchayats and introduced a three-tier panchayati raj system. The Act, however, could not be extended to scheduled areas, as local self-governance in tribal areas has to be in consonance with tribal needs, customs, traditions etc. as per the Constitution. Based on the recommendations of the Bhuria Committee, the PESA Act, 1996 was enacted. All states which had scheduled areas within their geographical boundaries were mandated to amend their existing panchayati raj acts, incorporating the provisions of PESA within a year, i.e. by 24th December, 1997.

The basic provisions of the PESA were aimed at facilitating participatory democracy in tribal areas by empowering the gram sabha to manage and control its own resources. The gram sabhas were given special functional powers and responsibilities to ensure effective participation of tribal communities in their own development in harmony with their culture so as to preserve/conservate their traditional rights over natural resources. The Act restored primary control over natural resources including land, water, forest and minerals and bestowed ownership rights over minor forest produce to the gram sabha. However it seems somewhat incredible and unbelievable that the Jharkhand State Panchyati Raj Act of 2001 has taken away even the rights of adivasis over minor forest produce from the jurisdiction of the gram sabhas, which was granted in the Central Act.¹²

Ratnakar Bhengra, an advocate in Ranchi High Court explains this:

"PESA is not a perfect Act. But the Jharkhand Government has diluted even basic provisions in its State PRI Act of 2001. We want the Act to recognise our traditional heads like Madharaja, Manaki, Munda, Daklo, Sahar and their customary rights. The current Act is simply a copy of the Bihar Panchayat Raj Act."

The state has not had panchayat elections since its formation. This together with non-implementation of PESA, and the government's thrust on industrialisation, has become easier for mining companies, industries and other infrastructure projects to acquire adivasi lands in Jharkhand. The "Jharkhand Andolan", as the struggle for separate statehood was

termed, has now entered a new phase, where the struggle is not for political identity, but a more basic fight to retain peoples' rights over their forest, mineral, land and water resources from the invasion of the new dikus.

Chhattisgarh amended its Panchayat Act and incorporated the provisions of PESA. The state has conducted panchayat elections on a regular basis. However instances abound where it has disregarded the provisions of PESA. Jindal's operations in Charratangar region, the dam on the Kurkut river, sponge iron unit in Chourenga village, near Raipur are all cases where clearly documented gram sabha resolutions have been disregarded. Deceit, misinformation, fraud and force are used to "obtain" no objection certificates from gram sabhas.

With most areas falling under the scheduled areas, the government has chosen to turn a blind eye to the PESA which allows gram sabha and local panchayats to take planning, decision making and regulatory powers. Ramesh Sharma, an activist with Ekta Parishad says: *"Chhattisgarh Industrial Policy says that lease in tribal areas will be given to adivasis. We openly challenge this. Not a single adivasi has got the lease. 90-95% of leases are given to companies owned by outsiders...not a single one is Chhattisgarh based company."*

On June 4th, 2005, a Memorandum of Understanding (MoU) was signed between the Industrial and Mineral Resources Department of Chhattisgarh and TISCO about the construction of a steel plant by TATA in Bastar district, close to Jagdalpur town. The MoU has been kept a secret document and will be published only after the Tata Company has entered into an agreement with the state government and has got all rights and clearances as promised in the MoU. Government of Chhattisgarh has promised the land of the adivasis to TATA for their proposed steel project without having the consent of the affected people, in a scheduled area. The plant located on 5300 acres of land will affect 1500 families from 10 villages.

The stories go on. What is common to all of them is that tribal lands are the most sought after resources. All these states have movements demanding the rights of tribal peoples to forest produce and against land acquisition and to protect their land livelihood and forests. In the greed for development and private profit, the state has dismissed and repressed many of these struggles as naxal movements and indeed used even state force to turn against its people. What the state is not willing to own up to is its betrayal of its promises to the adivasis and the consequent injustice, terror and violence it has wrought in their lives.

endnotes

1. The state comprises of twenty two districts of the erstwhile Bihar - Ranchi, Gumla, Lohardanga, East Singhbhum, West Singhbhum, Hazaribagh, Giridih, Kodarma, Chatra, Dhanbad, Bokaro, Palamau, Garhwa, Dumka, Jamtara, Deoghar, Godda, pakur, Saraikella, Sahebgunj..with an area of 74,677 sq km
2. Chhattisgarh Government website <http://chhattisgarh.nic.in/profile/corign.htm>
3. Jharkhand State Industrial Policy, 2001, <http://jharkhand.nic.in/governance/indpolicy.htm>
4. Ratnaker Bhengra personal interview, March 2006
5. Down to Earth, September 2006
6. Babulal Sinku "Sarkari Companiyan kar rahi hain avaidh utkhanan"
7. Rizvi, B.R. "A vision in disarray: the Nehruvian model of tribal development"
8. Chhattisgarh Industrial Policy 2004-2009 http://chhattisgarh.nic.in/govtpolicy/industrial_policy
9. Analytical Monthly review June 2007 Editorial
10. Ibid
11. Ibid
12. Sanjay Bosummullick "Hul to Raj: 150 years of crime against ecology in Jharkhand", 2006

The Warlis also have an interpretation of how life came about.

The eagles were also hunters and food gatherers like the Warlis. When the Warlis slowly settled down, started doing little bit of shifting cultivation, domesticating poultry, etc., the eagles would occasionally swoop down and take one or two chicken. Over time, the Warlis changed their mode of production, but the eagle did not. The story starts with a family that has seven sons and seven daughters-in-law. The elder six daughters-in-law could not conceive while youngest conceives a child. The elder six get extremely worried and agitated as the child grows in the womb. As the youngest approaches the day of delivery, they take her to the forest and forcibly abort and throw the child on a thorny bush to die.

All this was being watched by an eagle in the sky. After the women leave, the eagle picks the child and takes it to the heights. The eagle feeds and takes care of the child, and that is how the child grows up. When the child asks the eagle, 'Are you my mother?' the eagle says, 'Young man, it is time to take you home.' The family is very excited to get the child back. They go to the eagle and say that you have given us a gift of life, how can we repay this debt? Then the eagle turns to them and says, 'I have not done anything to get a reward. I have just done my duty and my duty is to protect life.' Then he turns to the older folks and asks, 'I am feeling very hungry, can I pick up one chicken from the field.' So, even today the older generations ask the children to allow the eagles to pick the chicken and not throw stones, because humans are paying an old debt to life.

This harmony is about human being in the continuous process of interpreting and reinterpreting the world around. And, therefore, this harmony is a dynamic process, and indigenous communities are part of this dynamic reality.

Story teller: **Pradip Prabhu**, in a personal interview, 2004



part III

The private hand

This 5600 yr old rock art is in the Karmagadh Reserve Forest, Raigadh District, Chhattisgarh. In the neighbouring state Orrissa over 130 sponge iron units function in the three schedule V districts of Sundergarh, Mayurbhanj and Keonjhar. Sponge iron is one of the worlds dirtiest and most polluting industries and India has the distinction of being the worlds largest producer of sponge iron.



Undermined

Adivasi struggles against mining in Vishakhapatnam¹, Andhra Pradesh

EQUATIONS

Andhra Pradesh has the highest number of adivasis in south India with about 33 indigenous groups constituting 6.59 % of the total population of the state (2001 census). The districts in northern and eastern Andhra Pradesh, such as Adilabad, Mehboobnagar, Warangal, Khammam, East Godavari, West Godavari, Srikakulam, Vijaynagaram and Vishakhapatnam, have sizeable proportion of adivasis and a significant number of villages in these districts fall under Schedule V areas.



The battle lines are drawn

Leasing out tribal lands to mining companies in Andhra Pradesh started in the early 1950s. At that time mining operations were also flourishing in the mineral rich regions of Bihar (now Jharkhand), Orissa and Madhya Pradesh (now Chhattisgarh). The district of Vishakhapatnam in Andhra Pradesh, with rich mineral resources such as bauxite, calcite, limestone and mica, was the first target of mining companies in Andhra Pradesh.

In Ananthgiri mandal alone, about 2000 acres of land including the land in Borra reserved forest² area have been leased out to the private mining companies since 1950s. This has led to alienation of adivasis from their land which they cultivated for centuries. Until 1987, the state granted mining leases to several players such as Unirock Minerals Pvt. Ltd, Kalyani Minerals, M. Seetharam Swamy, and R. K. Deo who were involved in mining operations in the area³. Birla Periclase, a subsidiary company of Indian Rayon and Industries, was the first big company that was given a lease of 120 acres in Nimmalapadu in 1987. The land was given to extract calcite, one of the principal raw materials for the company's Sea Water

Magnesia plant near Bheemunipatnam in Vishakhapatnam district⁴. It was not only the lease that raised the alarm among the adivasis, but also the infrastructure facilities provided by the state government to facilitate the mining operations. The state government shared 50% of the cost of constructing roads, acted as a “facilitator” to acquire land for a 22 km long road, with width varying from 25ft to 90 ft, and promoted construction of road for the actual operation site in the name of ‘public purpose’ and so on.

For about 40 years, the private mining companies in consultation with the state government continued to violate the legal provisions and took advantage of adivasi communities. One of the members from Nimmalapadu village that was affected during the operations of Birla Periclase says, *“Our ancestors were ignorant and the contractors took advantage of this. It was easy for them (contractors) to get their thumb impressions. We realised this mistake when we saw people with back-packs coming and digging our land.”*

In addition to the provision of the PESA Act, 1996 which protects the rights of the tribals in scheduled areas, Andhra Pradesh also has laws protecting the interest and rights of adivasi communities. They include –

- The Mines and Minerals (Development & Regulation) Act, 1957, framed by the Central Government under entry 54 of the union list. It was amended by the government of Andhra Pradesh adding a new section in 1991, section 11 (5) to the Act prohibiting prospective license or mining lease in the scheduled areas of the state to any non-ST person. However on the flip side, as per the act, these restrictions are not applicable to a State or Central Government undertaking;
- Andhra Pradesh Land Transfer Regulation Act, 1959, amended in 1970 which prohibits transfer of land in the Scheduled areas to non-tribal people.



The Samata Judgement

Samata an NGO, which has been working on the tribal land alienation issues, found two kinds of alienation - one by the individual non-tribal and the other by the State - in contravention of the Schedule V and the laws under it. Based on the above violations Samata approached the Supreme Court in a Special Leave Application in 1995 and won a historic judgement in favour of the tribal people of the Schedule V areas in July 1997. This is now popularly called the Samata Judgement.

The judgement stipulated that government lands, tribal lands, and forest lands in the scheduled areas cannot be leased out to non-tribals or to private companies for mining or industrial operations. Consequently, and with retrospective effect all mining leases granted by the state governments in fifth schedule areas therefore, became illegal. It was ordered by the Supreme Court in 1997 that mining operations should be taken up only by the State Mineral Development Corporation or a tribal co-operative if they are in compliance with the Forest Conservation Act and the Environment Protection Act. In the spirit of the 73rd Constitutional Amendment, 1994 and the PESA Act, 1996, the court outlined that the gram sabhas are competent to preserve and safeguard community resources and reiterated the right of self-governance of adivasis.



Violations galore

Since July 1997 the state of AP and the central government have been trying to appeal to the Supreme Court to modify the order to have prospective effect, but after three years in March 2000, the SC dismissed the appeals on the basis of merits. Hampered with this, the state & central governments next tried to remove the legal basis of the Samata Judgement, so that tribal lands could be leased out for mining and other industrial activity to private and multi national corporations. Alert civil society pressure, forced the government to abort this attempt. The AP government also undemocratically tried to amend the AP LTR Act of 1959 & the Amendment to Sec 11(5) of MM(RD) Act of 1957 by pressuring the Tribes Advisory Committee (TAC) to pass a resolution for amending the LTR Act so that the tribal areas could be opened up for mining to MNC's.

Less than decade after the Samata judgement the hilly tracts of Ananthgiri mandal were once again targeted for mining operations. The heavy influx of foreign capital to the neighbouring states of Orissa and Chhattisgarh undoubtedly played a significant role in creating interests in the state government in Andhra Pradesh to facilitate inroads of the big mining companies to the state.

The state government, entered into a Memorandum of Understanding (MoU) on 1 July 2005 with the private sector Jindal Group for a Rs. 9500 crore bauxite mining and smelter project. This time the state in a clever appropriation of the clause in the Samata judgement, *"mining in scheduled areas can only be taken up by the State Mineral Development Corporation or a cooperative of Adivasis"*, formed the Andhra Pradesh Mineral Development Corporation (APMDC) which in turn entered into a MoU with the Jindals. The APMDC was responsible for the mining in the agency areas⁵ and providing raw material to the smelter plant of Jindals.

The legal provisions under PESA in Andhra Pradesh have also been violated. According to section 4 (d) of PESA, *'Every gram sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution'*. It empowers the gram sabha to approve development plans, control all social sectors including the processes and people who implement these programmes and policies as well as control all minor (non-timber) forest resources, minor water bodies and minor minerals. Mining operations are to be conducted only after obtaining no-objection certificates (NOC) from the concerned panchayats.

The mounting opposition by the people to bauxite mining in the tribal area of Vishakhapatnam district did not deter the state government from expediting the project implementation. The district administration organised an exposure tour for the people from Beespuram village to Damanjodi in Koraput district of Orissa, where NALCO, a public sector unit operates bauxite mines. In Beespuram gram sabha, people were pressured by the District Collector of Vishakhapatnam to give NOC to the proposed mining operations. The despair among the people is described by Naidu, a village elder *"We are dependent on agriculture and coffee plantation. Our concern is that wastes generated by mining operations will get accumulated in our fields and we will not be able to cultivate even one crop a year. Instead of mining, government should have given facilities for marketing our agricultural produce."*

Jindal South West in July 2005 had planned to get all the environmental and other clearances for the project within a span of six months. In November 2006 it organised the public hearing for environmental clearance in Vishakhapatnam city making it impossible for most of the affected adivasis to participate in this crucial meetings. Reports also alleged that mining affected people were in fact prevented from participating in the public hearing process and that about 50 farmers were arrested by the police.⁶

The plant which ran into trouble following land acquisition issues decided to relocate from Subbavaram in Vishakhapatnam district to Sringavarapukota in Vizianagaram. As we go to press, Samata⁷ has appealed to the state government and the AP Pollution Control Board to postpone the Jindal public hearing until relevant documents of the rapid environmental impact assessment is available in Telugu for project affected people to understand. And until the sources of water for the S Kota refinery are made transparent and last but not the least until the state government has obtained the required clearances and permissions for the bauxite mining in the agency tracts of Vishakhapatnam district. As according to the MoU signed with the Jindals, Andhra Pradesh Mineral Development Corporation will continue to undertake bauxite mining and provide the required raw material to the Jindal alumina refinery.

For the adivasis of Araku and Ananthgiri manadals the next phase of the battle for protection of their resources, rights and livelihoods has begun!

endnotes

1. This case study was prepared by EQUATIONS with supporting information from Mines Minerals and People, and Samata, AP
2. 250 families that have been settled under the Borra Reserve Forest were given just 436 acres of land
3. Samata vs State of Andhra Pradesh Judgement 11th July 1997
4. ibid
5. The International Fund for Agricultural Development (IFAD) has provided development assistance to AP government in tribal areas. The project area is located in the north eastern regions of the state. The project was implemented in four contiguous Integrated Tribal Development Agencies (ITDAs), with a high concentration of families engaged in Podu shifting/slash & burn) cultivation. These areas are commonly known as agency areas.
6. South Asia Update, on website <http://www.minesandcommunities.org>
7. NGO wants hearing on Jindal unit postponed, The Hindu-Business Line, 1st June 2007



Orissa: High stakes & collateral damage

EQUATIONS

Orissa is one of the most mineral rich states of India. The state has about 33% of the country's iron ore reserves, about 60% of bauxite, 25% of coal, 32% of manganese and more than 95% of chromite¹. Cashing in on this rich mineral wealth, the state has invited heavy investments in aluminum, steel, power, refinery and port sectors. The global demand for steel and aluminum has increased the flow of investment in the state, which according to Steel and Mines Department of Orissa, is to the tune of 137156 crores, the highest investment in steel in country. However, much of this investment is into northern, western and southern regions of Orissa - dominated by adivasi communities who constitute one fourth of the state's population.



Mining and Industrialization in Orissa

The first wave of massive Industrialization in adivasi areas of Orissa started soon after independence. With the Tatas establishing the country's its first steel plant in Jamshedpur in neighboring Bihar, their survey team discovered massive iron ore deposits in the Gorumahisani, Badampahar and Sulaipath region of the then princely state of Mayurbhanj, which was mined for about 56 years (from 1911 to 1967). In 1953-54, the public sector Rourkela steel plant was established in Sundargarh district as its adjacent areas are rich in iron ore, manganese, dolomite and limestone - the basic ingredients for production of iron and steel. Besides creating the infrastructure to support industrialisation in the state, focus was also on developing large scale metal-based industries. The industrialisation process of the country in the 1960s, 70s and 80s concentrated on the northern and eastern part

of state and was facilitated mostly by government run corporations like the Orissa Mining Corporation.

The impact of deregulation of mining sector in 1993 by the Government of India has been a major contributor for the spread of mining in Orissa – transforming the whole state² into a mining and industrial colony for large domestic and international corporations.

Going by November 2005 official estimates, the government of Orissa signed 43 MoUs with steel companies in a span of two and half years (from May 2002 to November 2005)³. Recent media reports say that the Orissa government has signed 46 MoUs with steel and mining companies of which 42 are directly related to iron ore mining leases, while others are not linked with iron ore mining.⁴ Most iron and steel companies investing in the state in large and medium steel plants have also entered into mining leases or have applied for the same. South Korean steel major POSCO, which is proposing to implement the country's largest ever FDI project (Rs. 52,000 crores) through its 12 million tonne steel plant near Paradip port, has also applied for two mining leases, one in Keonjhar and another in Sundargarh district. Tata Steel is planning to invest Rs. 15,400 crores in a plant with production capacity of 6 million tonnes. Other big investors include the Vedanta Group with Rs 12,500 crore, Ruia's Essar Steel with Rs 10,000 crore and Murugappa group's TI Cycles will invest Rs 6,000 crore in Orissa. There is also talk of a \$6 billion Japanese conglomerate, Mitsui & Co considering a 5 million tonne steel plant with estimated investments of Rs 12,500 crore in the state. Arcelor-Mittal has also announced plans to invest in another mega steel project amounting to \$10 billion. Russian major Magnitogorsk Iron and Steel Company (MMK) plans to set up a 10 million tonne steel plant in the state. The scale of these investments is evident from the fact that as many as 455 mining leases are in the pipeline with the government and pending clearance.



Displacement of Adivasis

The story of massive displacement in Orissa started in 1953-54, when the 'first temple of modern India' the Rourkela steel plant was built.⁵ According to the Orissa State Gazetteer, about 33 villages in Sundargarh district were acquired for this plant by the Steel Authority of India (SAIL). This, in turn, uprooted 4,251 adivasi families of the region but even so many years down the line both central and state governments have failed to rehabilitate and resettle these people⁶. In the last 50 years, more than 30 lakh people have been displaced in Orissa with majority of them being adivasis and dalits.⁷ Mining and mineral based industries have been major contributors to this mass displacement, with large dams following this trend.

The notion of mining being equated to development and therefore justifying large scale displacement by the Orissa government and operating companies needs to be revisited. Mining is an extractive industry and cannot continue for long as it is based on non-renewable mineral and metallic resources. The mining leases are not for a substantial period and planning overall development of the area based on mining is not a viable option. For instance, on an average in the state, mining leases given to companies vary from 20-25 years, and in some cases (for example POSCO mining lease), it is up to 30 years. Therefore, we question, "What happens to local people if they are dependent on mining, once the mining lease expires and operating companies withdraw from the area?" Keeping in view the volume and pace at which companies are going to extract and process minerals, it is expected that in a span of 25 years, companies will consume 41% of chromite, 26% of iron ore and 20% of the manganese reserves of the state⁸. Further, by alienating adivasis from their ancestral lands and dispossessing them of their traditional livelihood resources, the mining process itself makes local communities start depending on mining as a source of sustenance. But after the lease expires, local communities are neither left with jobs in the mining sector nor with the means to carry on with their traditional occupations.

Apart from the direct impact of industrialisation in form of land alienation through displacement, there are several indirect impacts, which are subtle and less visible. The barter, of monetary compensation in return for adivasi lands is the proffered solution. A woman from Baphlimahal area, where bauxite is being mined says:

"We have Phool Puja, every year in Kodikamali and Chamamali hill ranges. During Diwali we go there and do celebration called "Sola Singo, Satrah Lala" in these hill ranges. I have seen this puja since my childhood. Now they will extract something called bauxite. They will not allow us to do this puja any more".

The government or private companies have disregarded cultural aspect of adivasi life which is closely linked to nature and their natural surroundings, deeply rooted and the basis of their identity. What is the kind of compensation for culturally uprooting millions of these adivasis?

Even in the measurable economic terms, the benefits of mining are several times less than the cost the adivasis are paying. For instance, the Vedanta Aluminium Refinery in Lanjigarh, Kalahandi district, has promised to provide one job to each family in the region. Similar is the promise made by Tata steel in its Kalinganagar industrial project, covering an area of 2000 acres, largely acquired from adivasis. However, the nature of the job is not clarified by any of these companies or the government. Over the years, employment in the mining industry has not increased. With forthcoming mining operations becoming technology

intensive the possibility of low skill employment looks bleak.⁹

The Orissa Government claims to have given adequate compensation and rehabilitation packages to families affected by displacement through mining operations. But the stories of people of Kashipur, Lanjigarh, Kalinganagar, Sundargarh reveal the gross injustice. In Kalinganagar, a woman says *"We have received Rs. 37,000 for our one acre of land, while the government has sold out this land to Tata for 350,000 lakhs per acre. When we demanded adequate compensation, government turned violent and killed so many of our people."*



Compromising the Environment

The environment has also taken a beating. Several mining companies have got mining leases on forested land. The land required by Vedanata for its alumina refinery and the mines on Niyamgiri mountains stretch to 723.34 hectares and 723.32 hectares respectively. The aluminium refinery has got clearances for about 58.94 hectares of forest land. But the Niyamgiri mining lease, which involves about 93% of forest area out of the total area proposed to be acquired for mining, has not got clearance. The encroachment over forest lands has adversely impacted not only the ecology of region, but also the livelihoods of a large number of adivasis who are dependent on these forests. Dongaria Kondhs the original habitants of the Niyamgiri mountains rely on fruits, tubers, fodder and other forest produce. If Vedanta gets a mining lease in these mountains, about 6000 people living in 30 villages will be displaced.

One of the chief mining-related environmental hazards is of pollution. Mining, mineral based industries, steel plants, smelter plant, processing/ refinery units and sponge iron units (SIU) are major contributors to water and air pollution in the state. During 2000-2005 the sponge iron industry in India has grown at a rapid rate, with India becoming the world's largest producer of sponge iron. SIU is an extremely polluting industry, where a plant with capacity of 100 tonnes per day can release 24 tonnes of particulate matter daily, the pollutants account for about one-fourth of total production. The units having the most efficient pollution control measures also emit about 200 kgs of pollutants. There are about 130 such units functional in three Schedule V districts of Sundargarh, Mayurbhanj and Keonjhar.¹⁰ With mounting people's pressure against the pollution caused by the SIUs, the government of Orissa has decided not to give approval to new units. However the existing units are still operating causing air and water pollution and health concerns in many adivasi areas.

National Aluminium Company Limited (NALCO), a public sector unit has bauxite mining and refinery in Damrajodi, Koraput district and has smelter in Angul districts of the state. According to a study done for the State Pollution Control Board¹¹ the discharge of effluents from the aluminium smelter plant of NALCO at Angul has caused fluoride pollution in drinking water sources - mainly wells and tanks while fly ash effluents from the captive power plant at Damrajodi contain heavy metals like chromium, lead and iron that are deposited in water bodies. River Nadira is said to have been most affected due to such fly ash deposits.

Another critical impact of mining in the Eastern Ghats is on the region's water resources. Bauxite having high porosity absorbs water and has high water retention capacity. The layers of bauxite in the Eastern Ghats act as a natural reservoir for the region, with several perennial streams in Orissa and Andhra Pradesh, originating from these mountains. Whether, it is Niyamgiri in Kalahandi district or Baphlimahal in Raygada, millions of adivasis and non adivasis in Southern Orissa are dependent on these mountains. For meeting their operational needs, companies are extracting huge amounts of water, while local people are deprived of this most basic amenity of life.

Several of Orissa's biggest dams and reservoirs have a close association with the aluminium industry. The Upper Indravati project involved seven dams and part of the channel joins the Tel river near Kesinga in Kalahandi district. Vedanta has had a pipe constructed to bring water from the Tel near Kesinga to its Lanjigarh refinery, a distance of about 50 kms. In Kesinga, ten motors of 500 hp each have been put up to extract water. This extraction has caused depletion of ground water in the area.

Instead of regulating the extraction of water and pollution caused by mining and industries, the state government is diluting its own environmental guidelines. For instance in 1992, the Orissa Government had put a ban on the felling of trees. But in 2005, the government lifted this ban.¹² The Government of India, Ministry of Environment and Forests (MoEF) is also culpable. In the case of Vedanta, the MoEF gave clearance to setting up of the alumina refinery project in September 2004, as if ignorant of the fact that this refinery project is integrated with bauxite mining project in the reserved forest of the Niyamgiri hills.

The rehabilitation package given by the government does not include these visible impacts on peoples' lives and culture as is evident from the Orissa Resettlement and Rehabilitation Policy 2006. For policy makers, cash and promises of employment equates to the compensation and rehabilitation and there is no compensation for the irreversible damage to forest, water and overall quality of environment of the region.



Who benefits?

The adivasis are paying the price of this massive unregulated development. Most of the mineral rich areas in the state are situated within Schedule V areas,¹³ with more than two-thirds of adivasis in these areas. According to Section 4 (h) of PESA Act,¹⁴ development projects are permissible in Schedule Areas provided the Grama Sabha or the Panchayats at the appropriate level are consulted before acquiring land. PESA enables the Gram Sabha and/ or traditional village institutions to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe.¹⁵

But the Orissa Gram Panchayats Act, 1997 has itself diluted the powers and responsibilities given to the Gram Sabha. Unlike PESA, the Orissa Act limits this provision by adding the qualifying clause that “the Gram Sabha shall exercise such power, and perform such function in such manner as maybe prescribed”. Further, the Orissa Act has also gives powers to the District Collector, or any officer authorised by the Collector to enquire into the functions and role of any Panchayat representative, the records, and activities of the Panchayat and can stay the proceedings of the Panchayat. Thus, the Gram Sabha is completely compliant to the wishes of the district administration.¹⁶ In a two-day conference of district collectors, the state government urged them *“to play an effective role to sort out different problems faced by the industries and create a favourable climate for rapid industrialization”*¹⁷

Utkal Alumina International Limited (UAIL), a joint venture¹⁸ of Hindustan Aluminium Corporation (Aditya Birla Group) and ALCAN (Canada) is a case in point. The proposed aluminium mining and refinery project is a 100% export-oriented unit located in Raigadha district. The bauxite is sourced from Baphlimahal ranges, while the refinery is near Kuchipadar village of Kashipur block. The local adivasi communities have been protesting displacement and forcible land acquisition by the UAIL for the last 15 years. Five panchayats passed Gram Sabha resolutions against mining and industrial operations in the block by UAIL. The EIA for its proposed expansion of alumina refinery in Kashipur was held at Tikri – which houses the police headquarters but is not in proximity to either the plant or affected villages. But on instructions of the company, the police did not allow people to be part of the public hearing process held in October 2006.¹⁹

Reports of state sponsored violence first appeared in December 2000 when police firing killed 3 people in Kuchipada village of Kashipur. These people had gathered in Maikanj to discuss the strategies of their protest against UAIL. The violence intensified in 2004 and

is continuing today. On the evening of June 15 2005, police battalions entered village Guguput near Kashipur, indiscriminately lathi-charged the villagers and used tear gas. Eleven villagers were arrested and sent to the jail. Jodi Sahu from Kuchipadar village says:

"I was going to Tikri to buy some household goods. Police saw me and took me to the police station, where unnecessary questions were asked. There are several cases of police abuse to our knowledge. We do not know lawyers or people who have powers. This adds to our problems".

Shukla Manjhi, who was campaigning against the proposed Vedanta mining in Niyamgiri was crushed under a company vehicle and killed. In Kalinganagar, 13 people died in police firing in January 2006 when adivasis were protesting against the meagre compensation they received from the government in return to their land.



Progressive liberalisation – laying the red carpet for mining companies

The Government of India in its new mining policy in 1994, allowed private investment (both domestic and foreign), in the exploration and exploitation of thirteen minerals. In 1999, the Minerals (Regulation & Development) Act, 1957, was amended with a view to accelerate the inflow of private capital and state-of-the-art technology aimed at allowing private players into this sector. In 1999, only ten minerals were in the list which required the central government's permission from the earlier list of 13. However, renewal of mining leases does not require the central government's approval. The FDI policy in the mining sector was further liberalised in January 1997 opening up an "automatic approval" route for investments involving foreign equity participation of up to 50% in mining projects, and up to 74% in services incidental to mining. In 2000, projects with foreign equity holding up to 100% were allowed on the automatic route, for both exploration and mining. As of July 2005, 73 mining projects were approved by the Foreign Investment Promotion Board (FIPB) of India. Several state governments, with Orissa, topping the list, followed the path suggested by the central government and went ahead in signing MoUs to invite investments.

Mining and industrial policies were given high priority in the state and legislations pertaining to adivasi rights, environmental protection and regulation have been violated by the state government itself. The State Government's Industrial Policy of 2004 also focuses on simplification of the investment process, encouragement to private industries to invest in the state, attracting foreign capital for setting up Special Economic Zones (SEZs) and

increasing foreign investment in the state. How these will benefit the people, especially adivasi communities, however does not get any mention.

One of the activists working in Niyamgiri and Lanjigarh region says:

"Gram Sabha and PESA provisions have become superficial in our area. Collector and police force decide the resolution of Gram Sabha and not the people. These legislations look good on paper and people have all respect for these laws. But does government respect them?"

In spite of the brutalities, the adivasis of Orissa are not giving up the fight – much to the surprise of the private players who perhaps never expected such strong resistance when they signed MoUs with the Orissa government. As one resident of Kuchipadar exclaimed –*"We will choose death over leaving our land, our mother earth."*

endnotes

1. Orissa Mining Corporation Limited
2. The areas which have been targeted are northern belt (Keonjhar, Mayurbhanj, Sundargarh districts), eastern, south and south-western parts (Kalahandi, Koraput, Raigadha)
3. Department of Steel and Mines, Government of Orissa (<http://orissagov.nic.in/steel&mines/mous.htm>)
4. Hindu Online, 30th March 2007
5. Orissa State Gazetteer, 1991
6. Joseph Marianus Kujur, "Development not for tribes", Pioneer, 18th June 2005
7. Saroj Mohanty, 2005
8. Debaranjan Sarangi, 2006
9. Interview Ravi Revapragada, convenor, Mines, Minerals and people, 2006
10. "A report on sponge iron industry": Study done by Manshi Aser and Rifat Mumtaz, NCAS, Pune
11. "Water Pollution in Orissa", study done by Dr. S.K Sahu, D. Sarangi and K.C. Pradhan, January 2006
12. Ruksan Bose, "The Axe Effect" Down to Earth, 2005
13. Areas are under Schedule V in Orissa: Mayurbhanj, Sundargarh, Koraput, Rayagada, Nabarangpur and Malkangiri districts in whole, Kuchinda tahasil of Sambalpur district,

Keonjhar, Telkoi, Champua, Barbil tahasils of Keonjhar district, Khondamal, Balliguda and G.Udayagiri tahasil of Khondamal district, R.Udaygiri tahasil, Gumma and Rayagada block of Parlekhemundi tahasil in Parlakhemundi Sub-division and Suruda tahasil of Ghumsur sub-division in Ganjam district, Thuamul Rampur and Lanjigarh blocks of Kalahandi district and Nilagiri block of Balasore district.

14. PESA came into force on 24th December 1996 is Central Legislation. It gives powers to Gram Sabha on planning and decision-making in adivasi dominated areas.
15. PESA, Section m, clause iii
16. http://www.agragamee.org/newinitiatives_pesa.htm
17. Orissa Government Press Release 24th November 2004, <http://orissagov.nic.in/news/archive/newsarchive.htm>
18. The original consortium in 1993 was composed of ALCAN (Canada), TATA (India), Norsk Hydro (Norway) and Hindalco (India). TATA and Norsk Hydro withdrew out of political concerns following widespread public protests.
19. Down to Earth, September 2006



Industrialization versus Development¹

Saroj Mohanty

"The growth of capitalism is possible only when a non-capitalistic or pre-capitalistic region or society remains as an external market." Rosa Luxemburg

Before we start any discussion on industrialization, it is important to place some myths that are related to industrialization and are embedded in our subconscious.

Rapid industrialization brings development. America, Britain, and the European countries are developed because of rapid industrialization. The possibility of a country getting rich is more if the country has abundant mineral resources.

We all know that the Modern Age started with some discoveries and inventions like the steam engine of James Mill. But a detailed description is there in Karl Marx's 'Capital' about the misfortunes brought by industrialization. Industrialization has a little role in the development of western countries, but actually colonial exploitation, cheap raw materials and labour, and control over traditional production and market system of the third world played a vital role in the development of these countries. When East India Company came to India, India's trade was nearly equal to the external trade of entire Europe (something more than 22%). Import and trading in Indian and Chinese clothes was strictly restricted in Britain by the year 1701-1702. It is also true that the technologies evolved by the imperialists played a major role for their growth. They have devised these technologies to exploit nature and people. These have also destroyed the self-dependent local economies.

The labourers and the farmers in England had revolted against displacement due to industrialization, and labour exploitation, but those revolts were very cruelly suppressed. The industrialists and the Govt. of England were able to tackle this problem because they had established colonies in other countries where they sent these labourers to work and

settle. Cruel oppression in the initial stages and then colonial employment and exploitation was the reason behind their success. This trend of development has created a dismal world; rich countries are getting richer and the poor, poorer. Unfortunately, our educated mass is completely biased with these myths and modern education is responsible for this. From the syllabus of primary education to higher education, these biased opinions are portrayed as the only truth. On this pretext, both domestic and multinational companies are strengthening these views on industrialization and development.

For example, in a leaflet on behalf of Utkal Alumina in Kashipur, it is said that Kashipur and its adjacent areas will be developed like America and Britain when Utkal Alumina will be operational. The district administration of Rayagarh had propagated this idea through meetings, speeches, and video documentaries. In fact, neither the company nor the administration could answer the questions raised by the locals against these false propagandas. The locals asked them why the people of Indravati, Sunabeda, and Damanjodi could not become rich. Before the Damanjodi Project, the number of tribals were 60 per 100; but now it has reduced to 12 per 100. They lost their lands, the river and all the other resources. Now they are saying, "listen to our plights or we will destroy the dam". Why has all this happened? Experts, in a seminar organized by the Jharasuguda College, disclosed that only a few persons gained from previous industrialization at the cost of the many. There is no qualitative change in education and health facilities. The previous industries in Laikera and Kirimira blocks are already closed and thousands have become unemployed again. It is clear what will come out of the mushrooming sponge iron industries and the Bhushan Steel, thermal power projects, the Vedanta Project, and the Aditya Project in Jharasuguda and Sambalpur. A few have become rich and the rest have passed into oblivion.



The Abundance of Natural Resources and the Development of the Locals

Many, taking into account the mines, forest, and water resources; say with pride that Orissa is not poor. They, who demand for a separate Koshala state, say that western Orissa is rich with natural resources and they can become rich by utilizing these resources. But history will say that they are ignorant of facts as all those people in the areas which are rich with natural resources are backwards till date. Starting from the Red Indians of America, the Ogonis of Nigeria, the tribals of Africa, Lanjigarh, and Rayagarh, will remain backward. According to Kishan Pattanaik, 'the children of Iraq are cursed because their country is rich with oil resources. Whoever is rich with natural resources, will become paupers or slaves.' The areas with natural resources get exploited as the colonies of capitalistic and imperialistic countries.

To understand this, there is no need to go to Africa. Jharkhand, Orissa, and Chhattisgarh are clear examples of this.



What Type of System and Development Do We Want?

We want a system which considers every person, religion, tribe & area, an indispensable part of it where there is enough space and opportunities for a healthy life and education. To attain this goal should be the first condition of 'development' and to this end how should we utilise land, forest, water, and minerals and what will be the role of industries in this are the real questions. If attainment of minimum goals remains the main objective of plans, policies and industrialization follows suit, then it will lead us to development in the real sense.

This type of industrialization is possible only when the political set-up of a country gives importance to the fulfilment of these minimum goals and frames economic and development policies in tune with these.

When India became free, Gandhiji was worried about who should be the role model for our development and how we can frame our development policies. Gandhiji was planning for an economic society without modern hi-tech technologies. He was an advocate of village-based, agriculture-based, and labour-based industries.

After independence, Gandhi's vision of development became irrelevant. Instead, they adhered to western trends which ushered equal distribution of poverty in India instead of equality in society. Nehru took charge of the country banking on this policy which claimed that let wealth get accumulated, and then it will be divided equally among the people automatically. Only those persons ruled India who were influenced by western systems. As a result, they became champions of urbanization. Thus, capitalism came to India in the guise of socialism. Wealth was created, but it was never distributed, instead it got accumulated in the hands of a few. The stress was on big dams, big industries, and modern technologies. The result of this trend is that most of the people in the world who are below the poverty line are in India. Their basic needs have not been fulfilled. Cottage industries and small industries got neglected. Rourkela, Durg, Bhilai, Hirakud, and Bhakra Nangal are described as the temples of development. Private industrialists were encouraged in the name of 'mixed economy'.

If we think that by following this development policy, and by using the western technologies, we can make India or Orissa developed; then we have to decide which countries or states

or areas will be our colonies. This is going on in India now and this has resulted in acute poverty, illiteracy, and mal-nutrition. The number of half-starved in our country is nearly 40 %. The situation has become such that our government cannot guarantee to provide 100 days of work in a year to all the poor. The gap between the rich and the poor has increased 74 times. From 1947, there was internal colonialism; but after 1980, there started international colonialism in India. Now, we are the victims of multi-faceted and multi-staged exploitation.



An Overview of Industrialization in Orissa in the last 70 Years

Industrialization is necessary for the development of a country, because we are not in the stone age. It is not achievable only by agricultural and forest-based production. So let there be industrialization, but what will be its role? Should it be according to the needs and income or it should be for the benefit of private companies? Should it be for the upliftment of the people irrespective of class or it should be for the rulers and the industrialists? What type of technology will be used in these industries: will it be labour-based or technology-based? Will the means and process of production be controlled by the public or it will be controlled by the government or by the private and multi-national companies? Will the volume of production will be according to our needs or it will be according to the demands of the international market? Is it appropriate to export limited mineral resources to collect revenue and earn foreign exchange? Is it appropriate to force labourers to work in unhygienic conditions so that companies will get more profit? If we give importance to people, the answer to these questions will be easy.

In our subconscious, it is rooted that industries are those which use mineral resources; not the cottage industries or other traditional industries which are labour-intensive and pollution-free. Industries are set up to create income so let us analyse to what extent we have attained this goal. Nearly 15,000 crores are invested in the last 70 - 80 years for mining. 342 big and medium industries are established by investing 2,000 crores. More than 66,000 small industries are established by investing 1,550 crores and more than 15,00,000 cottage industries are established by investing only 600 crores of rupees. If we invest one crore rupees each in large, medium, small, and cottage industries separately, we can employ 7, 40, 287 and 4475 persons respectively. That our government doesn't want to learn from this analysis and evidence is clear from its investment and industrial policies.



Displacement

Nearly 30,00,000 people have been displaced because of the big dams, mines, and industries, most of whom are tribals. Following them are the farmers and the Dalits. Lakhs of people are forced to migrate to other states because of mass deforestation. Out of the total population of Orissa 50% are below the poverty line and 30% are poor belonging to the lower middle class. 80% of them struggle for the minimum basic amenities. Their demand for industrial products is very low. The 20% of Oriyas who belong to the middle and upper class are rich. But, the demand for industrial products will not rise until the income of 80% people increases. Thus industrialization in Orissa is not meant for the Oriyas. 20% are employed in the industrial and service sectors and 5% are dependent on large and medium scale industries. This is the overall picture of industrialization in the last 27 years.

Now, let us go to the income side. Orissa remains one of the most backward states in India. The last 70 years has proved that large and medium scale industries have been incapable of creating employment and income. Most of the employment and income are created by the small and cottage industries. The policy of industrialization adopted by the government of Orissa since the last 70 years was not made according to the demand and income of the people of Orissa and did nothing for the development of agriculture, forest, and cottage industries.



Industrial Policies after the 90's

After the 90's, major changes in the industrial policies were encouragement to private companies, mainly the MNCs and giving them monopolies of trade, closing down nationalized industries instead of rectifying the problems of management, selling these industries to private industrialists at throw away prices , patronizing only big industries, privatizing the nationalized industries, making the mine-based industries export oriented to fulfil the demands of the international market, stress on imported hi-tech technologies, amending the labour law, industrial disputes Act, land lease Act, and increasing the lease time of lands, forcing workers to take voluntary retirement, and giving concessions to domestic and multi-national companies. After 1992, liberalization, and privatization became more dominant in the industrial policies. It is clear from the industrial policies of 1992, 1996, and 2001. The industrial policy of 2004 has been framed by making some changes as given below.

1. To simplify the process of capital investment,
2. The state govt will encourage private industries and invite private capital,
3. To attract foreign capital by establishing special economic zones,
4. The govt will welcome foreign capital for establishing industries,
5. It will create a "foreign investors' board" to simplify the process of foreign investment and there will be an "Orissa investment Centre" in New Delhi, and
6. To establish new technical institutes in collaboration with the private sector. In brief, it will create opportunities for them to get more profit by investing less.



Concession to Industries

1. No need to pay premium on land,
2. Waiving of electricity charges to the new industries upto a load of 100 KV,
3. The industry which has its own electric supply, can sell its surplus power,
4. The new industries have to give only 35 - 50 % of the total expenditure on water upto 4 years,
5. Big industries do not have to pay more than 2% as central sales tax upto 15 years,
6. The big industries do not have to pay entry tax on imported raw materials, and
7. They will get a rebate of 50% of sales tax for 10 years. This spate of concessions does not seem to satisfy industry which clamours for even more.



Who is to Profit?

If the aforesaid concessions are given, companies will get a return back on their capital through rebates and concessions within 5 - 10 years. This means they will exploit our resources without investing anything. e.g Jindal invests 5,000 crores of rupees, but gets a yearly concession of Rs 1,000 crores from the government. Thus, the company will get back its money in five years. Interestingly, the company will get these concessions for 20 years, thereby earning 300% profit. The same will be the case with the Utkal Alumina, in Kashipur, in Lanjigarh, and in Paradeep. Those who oppose these projects have to face the system and the government of Orissa - the government has declared! For this, the govt. has employed the police, the CRPF, and the reserve battalions to suppress any resistance and revolt.

Let us discuss the 10th Five Year Plan of the govt. of Orissa in the context of all these rebates to industries. In the 10th Plan, total budgetary allocation for social welfare was Rs 5,589 crores. This means the budgetary allocation for social welfare of our state is nearly equal to the concessions given to a company. Why does not the government cut the subsidies to these companies and spend the amount on public welfare as it claims its inability to spend more on this sector because of lack of funds? If all the proposed projects are established, total capital investment will be Rs 3,00,000 crores and if the government accepts all their demands for subsidies, it will be nearly Rs 25,000 crores annually. The government will lose a revenue of Rs 15,00,000 crores in 20 years. The government is also losing hundreds of crores of rupees as the rate of royalty for mining is not amended. The government has lost revenue of Rs 1,200 crores on coal alone during the period 1997 - 2000.

Why is the government doing this? First is that our country and our state is in a debt trap. Let us take the case of our state. By the end of the fiscal year 1980 - 81, total amount of debt was Rs 1277.05 crores and by the end of the fiscal year 2002 - 03, it became Rs 23,733.99 crores. We have to borrow to do developmental works, to pay salaries to the government staff, and to pay interest amounts of previous loans. So, the conditions made by the money-lending institutions like the World Bank, the IMF, the DFID, and the ADB have become guiding force to our economic policy. These institutions always represent the interests of the world and the corporate class. That is why the government is bound to give concessions and subsidies to the companies. Second reason is donations to political parties by these companies to fight elections. We can get out of this by rejecting the conditions of loans, by arranging alternative capital to challenge the loan-giving institutions; but it is totally impossible while the present day politicians are in power.



The Aftermath of Rapid Industrialization

In the near future, more than Rs 3,00,000 crores is going to be invested in Orissa. From this, Rs 53,000 crores in bauxite, Rs 65,000 crores in iron, Rs 75,000 crores in steel and sponge iron, Rs 62,000 crores in electricity, Rs 18,000 crores in ports, Rs 36,000 crores in railways, highways, and roads in K.B.K districts, and Rs 20,000 crores in petroleum will be invested. On the other hand, according to the Govt. of Orissa's notification, 2,50,000 people will be displaced in the next 10 years due to these projects. But according to unofficial sources, the total number of displaced will be 10,00,000.



Income

In alumina industries, only 13,000 people will be employed when total capital investment is Rs 53,000 crores. In steel, 75,000 persons will be employed when Rs 75,000 crores is invested. In petroleum, electricity, and ports, 42,000 persons will be employed when Rs 84,000 crores is invested. Only one person will be employed in every 4 crores of rupees invested in the alumina projects that are going to be established in Kashipur, Dashamantapur, and Laxmipur. And this is only for 25 - 30 years. While 2,000 persons will be employed here, 50,000 families will lose their occupation. In steel sector, only one person will be employed in every 14 crores of rupees invested. In the last 70 years, a total of Rs 30,000 crores is invested for industrialization and only 32,93,000 persons are employed. While Rs 5,000 crores is invested in the Vedanta Project in Lanjigarh, only 250 persons are getting employed for 25 -30 years. 10,000 will lose their occupation directly and 15,000 will lose indirectly. In the last 70 years, a total of 4,30,000 persons are employed in the small industries where only Rs 1,500 crores is invested and in cottage industries where only Rs 600 crores is invested. In Orissa, still there are 20,00,000 educated unemployed. Employment can not be created by investing capital only. The welfare of the general public should be the main objective behind investment.



Mass Movement is the Only Alternative

We have to oppose this type of industrialization and this has been started, whether it is in Kashipur, Lanjigarh, or Paradeep. The tribals, the farmers and particularly the women are strongly opposing these projects. But they cannot face the violence by the state and corporate capital. An alternate social-political power to replace today's political set-up has not been created yet. That the economics of globalization cannot give and does not want to give justice to 90% of people of this country is clear from its behaviour towards the revolting masses. It is unfortunate that the Left parties are thinking that it is possible to change the social inequality and the feudalistic system by establishing hi-tech industrial projects in spite of growing unemployment, displacement, and financial crisis in the third world. It is also true that their influence is limited to a few regions. From the continual relationship, communication, and co-ordination with these parties, there is a possibility for creation of a new power by the revolting masses.



Evolution of Alternative Power

Let there be relationship, communication, and co-ordination between the Left parties, Socialists, intellectuals, human right activists etc. Though this has started among CPI(ML), Liberation, ML New Democracy, NAPM, a healthy, permanent, democratic co-ordination has not been possible. The CPI has decided to oppose the Posco Project and the proposal to give water to industries from the Hirakud Dam. It is hoped that in the coming days they will oppose this imperialistic exploitation with a clear-cut disposition. In the beginning, it will be in a unplanned manner. At the time of adversity, instead of co-ordinating with others, it is unfortunate to see these organizations remaining inactive. The forces who want a change have to shed their banner, ego, and false self-esteem. Whether they believe in violence or in non-violence, this struggle cannot be successful without mass organization, and mass participation. Let the policy of violence not be an obstacle in the path of mass participation and mass movement, and let the policy of non-violence not force them to be escapists. So all of them have to unite under one banner to fight against imperialistic exploitation and discuss on the following points:

1. To build a clear-cut opinion on the role of the state. A united opposition against the organized violence by the state.
2. Ideas on alternative development.
3. To understand the political economics behind present technology and thought on alternative to man-machine phenomenon.
4. To stop merchandization of natural resources and building an alternative economic structure for sustainable development.
5. To think about the alternative to mines.
6. To take the debate on the limits of development to the next level.
7. To decide about the techniques and process of mass movement.
8. The nature and method of collecting funds for the organization.
9. To build a public view against the current system, and decide likewise programmes, and propagating literature for this purpose.

Behind all these, the issue of development is at the core. Discussions on alternative development, industrial, water, and forest policies should continue keeping in view the limited resources and the welfare of the people. The programme of communication, co-ordination with other forces and a united struggle should go on beside strengthening the local organizations.

endnotes

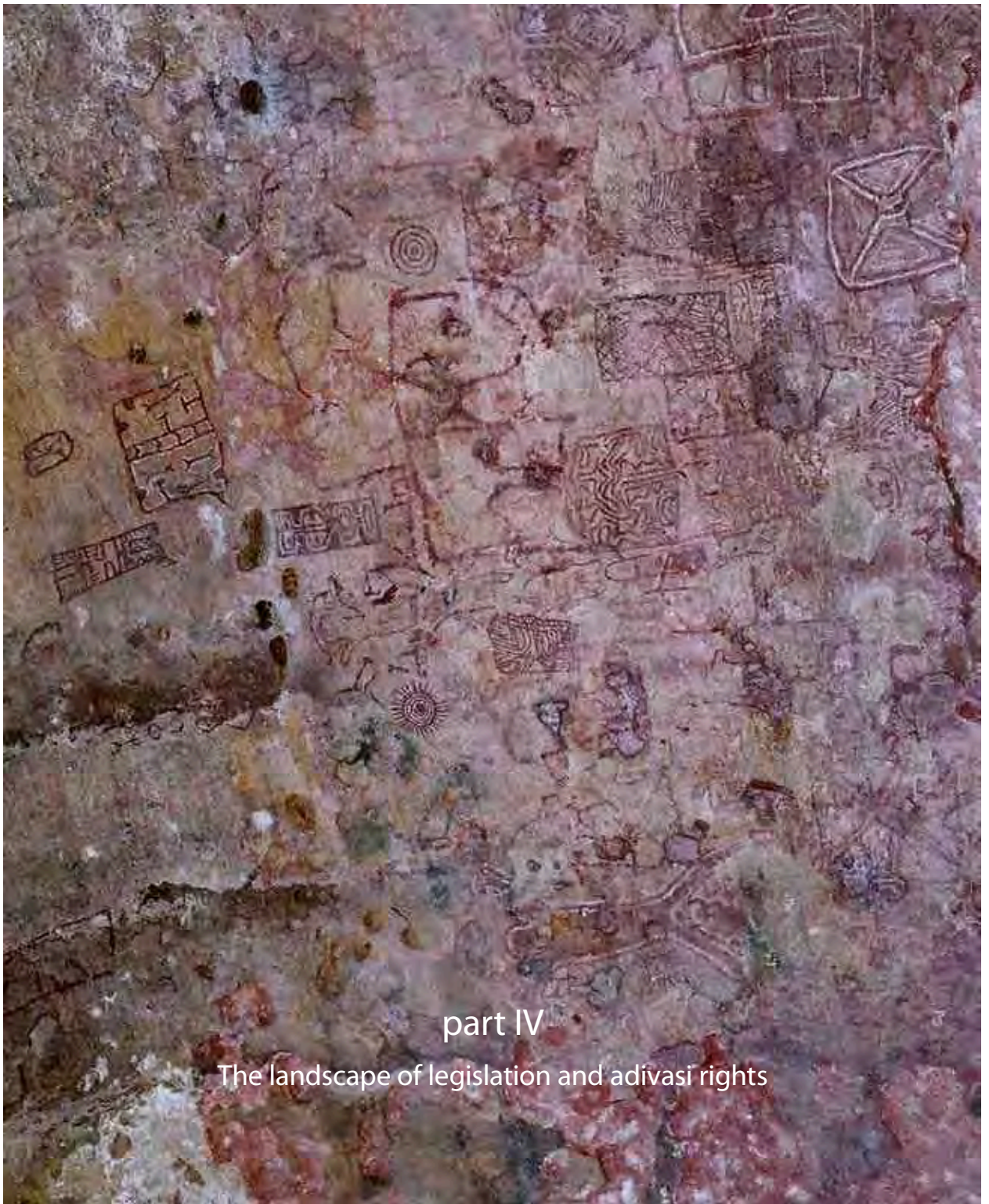
1. We gratefully acknowledge Mr Manas Mohanty for translating this article from the original Oriya to English.

*Real development only happens
when the people can exercise their rights.
We shouldn't have to give up our rights
for someone else's benefit.*

*If our Dessauli, our festivals,
our sacred stones are all drowned,
what is the point in having rights?
We won't live without them.*

We want development, not destruction!

Niti Mai, speaking against the Subarnarekha dam project, Jharkhand



part IV

The landscape of legislation and adivasi rights

This 5600 yr old rock art is in the Karmagadh Reserve Forest, Raigadh District, Chhattisgarh. In Raigarh district alone about 1740 ha of agricultural land has been given for industrial purposes. In most cases provisions of PESA and environmental legislations have been violated.



A Nomad called Thief¹

Dr. G.N. Devy

The population of the denotified and nomadic tribes (DNT) is approximately six crores in India. Some of them are included in the lists of schedule castes and schedule tribes, and quite a few are enlisted in other backward classes. However, there are many of them who do not figure in any of these lists. The DNTs are commonly branded as born criminals.

The story of the DNTs goes back to the early years of colonial rule. In those times, anyone who opposed the British colonial expansion was perceived as a potential criminal. Particularly, any attempt to oppose the colonial government with the use of arms led to criminal offence. Many of the wandering minstrels, fakirs, petty traders, rustic transporters and disbanded groups of soldiers were included by the British in their list of criminal groups. During the first half of the nineteenth century, the tribes in the North West Frontier were declared "criminal tribes". This category increasingly became open-ended and, by 1871 the British had prepared an official list of criminal tribes. An Act to regulate criminal tribes was passed in that year. For instance, the Bhils who had fought the British rule in Khandesh and on the banks of Narmada were categorised as criminal tribes and convicted under section 110 of the Indian Penal Code. The Criminal Tribes (CT) Act made provisions for reformatory settlements where the criminal adivasis could be kept in confinement and subjected to low paid work. They were required to report to the guard rooms several times every day, so that they did not escape the oppressive settlements.

The CT Act provided for confiscation of land and other possessions of the so called criminal tribes and forced internment. Nearly two hundred nomadic communities were brought under the provision of CT Act and special areas in the name of settlements were created. By 1921, the CT Act was extended to cover numerous other tribes in Madras Presidency, Hyderabad and Mysore. It was around the time a new leaf was written in Indian politics with the emergence of Mahatma Gandhi as the leader of the freedom struggle, the country

stood witness to the emergence of a new class of people who were branded as born criminals. After independence, little solace was offered by the state governments or central government to the DNTs as they were distributed in the ST, SC and the OBC categories

Soon after independence, the communities notified as criminal adivasis were denotified by the Government. This was followed by substitution of a series of Acts, generally entitled "Habitual Offenders Act" (HOA). However, these steps brought little respite to the DNTs as most of the provisions under CT Act, except the provision that an entire community can be born criminal, remained unchanged in HOA. The training and habit of looking upon the "criminal tribes" as born criminals, during the colonial regime, by the police force as well as the general public has continued till date. As a result, even now the DNTs are the first suspects in the neighbourhood if there is a petty theft in a locality. The ratio between the arrests and the convictions of the DNTs needs to be analysed to see the extent of the harassment caused by the police to this most vulnerable and disadvantaged section of our society. Already alienated from land possessed by them during the colonial rule, post independence has also not brought any respite to restore the lost lands for the DNTs. The nomadic nature of living of DNTs adds to the exclusion and atrocities they experience as they are deprived of health care, education and nutrition leading to high rate of illiteracy and frequent cases of malnutrition among the tribes.

The DNTs are an easy catch for the police, and being illiterate and ignorant of the law of the land, they often get into difficult situations. For example, they soil their new clothes before wearing them as they are easily implicated with case of theft if seen wearing new clothes. Mob-lynched, hounded from village to village, starved of all civic amenities, deprived of the means of livelihood and gripped by the fear of police persecution, the DNTs of India are on the run. For them freedom has no meaning.

The DNTs are in general considered as criminals and anti social and the Chhara community of Gujarat is no exception. The Chharanagar, situated near Sabarmati Ashram in a dilapidated state, is a sad reminder of how little the freedom struggle offered the tribals and nomadic communities of the country. This is an ungainly slum of ill planned houses just outside the old settlement with a population of nearly seven thousand. The place remains out of bound as it is considered to be criminally infested area. It is an irony that high education level of people in the area with degrees in law, fashion technology, teachers and so on does not ensure work for people. *"Even when a Chhara has a first class degree he does not find employment. People distrust us. So, finally everybody is compelled to get back to this ghetto"* says Arvind Kodekar, a lawyer. *"Chharas train their children, particularly girls, at a very young age to run liquor stocks, often smuggling them in balloons put inside their blouses. A Chhara, who works as a clerk in some government office, carries his wife on his bicycle so that she can beg outside*

the office. Chharas are shop smart petty thieves” reveals the work of a scholar from Gujarat University.

The Chharas of Gujarat are called Sansis in Punjab and Kanjars in Rajasthan. They are not alone, there are nearly two hundred DNTs in India and their total population may well be near sixty million. Their infamy is as severe, as the fate of the nomads in a society dominated by the value structure created by a sedentary culture, has always been that of a thief irrespective of the status. It is alarming that such a large number of people are stigmatised for so long. It is their hands, their skill and labour that made Indian culture aesthetically so rich. But it is unfortunate that such a rich heritage is being thrown away by branding them as thieves and criminals.

It is the treatment meted out to the nomads in all these years that has rendered them as thieves. There is absolutely no effort by the state to integrate them and accord them dignified status. The question asked by a hijra (hermaphrodites are included as criminal tribes) during the last annual congregation in 2003 at Kaleshwari mela in Gujarat speaks volumes about their status. *“Sir, I have heard it is said that India is now a free country with her own laws. Is it true?”*

The well tended farms, spread of education, and love for merriment is some of the characteristics of Tanda or the settlement where Banjaras live. In a settlement there are not more than sixty houses most of them are no more than dignified huts, but some have acquired brick and cement walls and at least two have polished tiles for the flooring. The characteristics and lifestyle clearly show that the Banjaras are no different from other socially mobile classes of the Indian poor. Banjaras feel bound to Senadas, the folk hero, who fought against the British in order to fight the levying of tax on salt. Their language is called Goud Banjara, perhaps a derivative of the Gaudi but more likely that of the Romani language mentioned by the tenth century theorist Rajasekhara. The history of the Banjaras between the tenth and the nineteenth centuries is lost in amnesia and some subconscious shape of a memory rises to the surface when they listen to the heroic role of Senadas. Their customs and rituals suggest living in a commune. The Banjaras are spread over in six clans, which are distributed over thousands of Tandads stretched between Rajasthan and Andhra through central India. They claim that their population is nearly twenty million, and though this count may seem exaggerated, there is no doubt that it is several millions considering that once every year they congregate in a mela² of nearly one million near Yavatmal.

The way they organise themselves, find a place in the complex social order and shine in several newly acquired professions shows that the Banjaras have an innate intelligence, which has helped them survive the Criminal Tribes Act. Their grace of manner and their

natural wisdom show that theirs is a civilisation as old as any other in India.

Maharashtra had a Banjara chief minister for many years and he did make efforts to resettle them. His efforts have paid off no doubt. Yet the popular imagery of Banjaras spawned through the Hindi cinema as snake charming men and women of easy virtue continues to conceal the great revolution that has taken place among them. It is the same with Chharas. People still refuse to acknowledge that given an opportunity, the Chharas will excel in education and in any profession.

The NHRC in 2000, under the guidance of Justice N. Venkatachaliah, and Justice J.S. Verma passed the following resolutions:

1. to appoint a retired senior police officer of a high reputation in every state to watch the cases of atrocities against the DNTs
2. to advise the National Police Academy and other institutions imparting training to police officers to reorient their syllabi
3. to take the necessary steps leading to the repeal of the Habitual Offenders Act
4. to direct central / state governments to make proper enumeration of the DNTs and to work out action plans in order to provide educational, employment and other infrastructural facilities to them
5. to launch a massive information campaign aimed at bringing about change in the general attitude towards the DNTs and,
6. to direct the National Sample Survey to make a special survey of the socio economic conditions of the DNTs.

Unfortunately there are not enough instances where the DNTs are not doubted. It seems a very long struggle before they are recognised and accorded dignity as human beings. It is almost a regular activity with the prohibition department to carry out a raid at their will. On one such occasion the raid continued for several days bringing in its wake terror and arrests in Chharanagar. Attempts by the Chharas to meet the social welfare minister were in vain. The efforts by concerned citizens and well known people such as Mallika Sarabhai were met with severe criticism. But this has not deterred a small group of young Chharas to come together and work towards social transformation.

There is a need to bring about a radical change in the perception of people about the DNTs and the state has a moral responsibility to empower these communities. However, it has been difficult to bring the state to do something concrete on this. The promise made by Mrs. Maneka Gandhi in 1998, the then minister in the Ministry of

Social Justice, to set up welfare schemes for DNTs is lost in the stacks of files till date. In all these years, the DNTs continue to languish in despair. The only consolation they have received ever since the denotification was the resolutions passed by the NHRC. With this step and the fact that DNTs are becoming more articulate and assertive, one can only hope that the sufferings of the DNTs will soon come to an end.

That the denotified communities are producing writers like Laxman Gaikwad, Atmaram Rathod and dramatic creations such as Budhanand Tanuja is a sure sign of awakening and social change within these communities. All major social changes are preceded by the quickening of the imaginative life of people. It is also fortuitous that some of the great creative minds of our time such as Mahashweta Devi, Mallika Sarabahi, Bhupen Khakhar, P. Satchidanandan and Gayatri Spivak are actively engaged in the task of removing the stigma attached to the denotified communities. It is also very fortunate that the NHRC has taken up the issue as one of national importance. Let us hope that sordid saga of criminalisation of the innocent that began with the 1871 Criminal Tribes Act comes to an end in the twenty first century. Nomads too are human beings.

endnotes

1. Also the title of a book by Dr Devy published by Orient Longman in 2006
2. This is an annual congregation of Banjara community held every year near Yavatmal in Maharashtra. Yavatmal is a preferred choice as 6% of its population belongs to Banjara community.



The Usual Suspects? **The Nomadic and denotified tribes of Gujarat and Rajasthan**

EQUATIONS

Nomads (ghumantoos in Hindi) are itinerant tribes, each characterized by their distinct beliefs, customs and traditional occupations. It is difficult to estimate the population of nomadic communities in India due to the lack of any official census¹. Estimates suggest that they constitute about 7% of India's population. Some of these communities are enumerated in the census for Scheduled Caste (SC) and Scheduled Tribe (ST) communities but many are simply not taken into account. Nomads can be divided broadly into pastoral nomadic communities and non-pastoral nomadic communities. Pastoral nomads, as the term suggests, are dependent on agriculture and livestock rearing. The lifestyle of pastoral nomads has evolved through their dependence on agricultural yield and grazing land to arrange fodder. They are mainly found in the Himalayan region and in parts of Rajasthan. Non-pastoral communities are dependent on sedentary society for their livelihood by providing goods and services to the communities.

The social and cultural characteristics of these nomadic communities are closely related with their economic activities. Most of the non-pastoral communities follow a traditional system of moving in groups of five to twenty with a senior member, who is also responsible for settling disputes, leading each group. Each of these sub groups travel independently on different routes in order to meet their livelihood needs and maintain an autonomous system of governance for most of the year. In some communities there is a system of meeting and an annual customary camping, where reunions, marriages and even cattle trading takes place.

The nomadic way of life of these communities revolves around socio-economic necessity, ranging from making tools and utensils, supplying basic goods (like salt, wool), providing

medicines and herbs, to providing entertainment. Non-pastoral communities are found mainly in the states of Rajasthan, Gujarat, Madhya Pradesh, Maharashtra, Karnataka, Andhra Pradesh, Tamil Nadu, Punjab and Haryana.

Most nomadic communities belong to the category of “De-Notified tribes” (DNT). These tribes are the communities who were originally listed under the Criminal Tribes Act of 1871 and were de-notified after independence. As per this Act these communities were defined as “*addicted to the systematic commission of non-bailable offences.*” Once a tribe became “notified” as criminal, all its members were required to register with the local magistrate, failing which they would be charged with a crime under the Indian Penal Code. With the repealing of the Act in 1952 the process of de-notification was also effected. The term nomadic and de-notified do not belong to the same typology as, nomadic is an ecological-ethnic-cultural term and de-notified has a political connotation. As most nomads belong to the political category of de-notified and vice versa and these terms are often used interchangeably.² There are about 160 such communities who were identified as criminals under the 1871 Act³ and their numbers went to 190 at the time of repealment.

This case study portrays the historical injustice meted out to DNTs and nomadic communities and their struggles to live a life of dignity. The primary sources of case stories are from Ahmedabad, Baroda and Panchmahal districts of Gujarat, as well as Alwar in Rajasthan while cases from other states are sourced from secondary literature.



History of Marginalisation

Available accounts indicate that these nomadic communities were an integral part of the society and its economic processes around the middle of the 19th century. With their skills and ability to travel for long distances with their kin, they provided essential goods and services to sedentary agrarian communities. The sedentary and nomadic way of life coexisted together in Indian society since ancient times. The nomadic way of life was not unacceptable in society, and even the sedentary part of society practiced nomadism on certain occasions. For instance Indian agriculture was traditionally rain fed and after the monsoon undertaking a pilgrimage was an essential part of the culture. The rajas and princely states of India hired soldiers from among the farmers. They were not permanent armies. Rulers encouraged the idea of the subjects moving for about 4-5 months in a year and being engaged in agriculture for the remaining 6-7 months of the year.⁴ A point of view is also that nomadism emerged in response to change in climatic factors such as drought

and flood.

The dishonour which many nomadic and DNTs face today is deeply rooted in the historical processes. The story of their exploitation and marginalisation can be traced back to the colonial period. The British were suspicious of the nomadic nature of their lives and the fact that the vocation of these communities was not very visible⁵. For instance petty traders, communities making iron utensils and weapons, performing communities, fakirs and sadhus came under suspicion. With the sedentary way of life gaining more acceptance in society, these nomadic communities became isolated especially after 1857 when the British became suspicious that these communities were involved in criminal activities. Prior to 1857 and after that, Gujarat, Maharashtra, Madhya Pradesh, Jharkhand and parts of Central and Eastern India had several adivasi uprisings against colonial rule for protection of their rights to natural resources. The British believed nomads to be the medium of communication /secret agents for these rebels through their drama, songs, dances and clamped down on their lifestyle. 1857 marks a milestone when the colonial powers took harsh measures to control the movement of these nomadic communities. The introduction of Criminal Tribes Act, 1871⁶ by the British was a turning point as it changed the way of life and livelihood the nomadic people. They continue to face stigma and suspicion from society even after independence and being denotified⁷ in 1952 following the repeal of Criminal Tribes Act, 1871.



Legal Frame to Check “Criminality”

The Criminal Tribes Act of 1871 was a measure to check possible “criminal” activities and was applied to hundreds of ethnic groups who were seen as potential threats to the British empire and society at large. This legal frame branded a number of marginalized groups, which were mainly nomadic and adivasis as innately criminal and made elaborate arrangements for their surveillance. When the Bill was introduced in 1871 by T. V. Stephens, stress was laid on ethnological theories of caste which linked profession, upbringing and background.⁸ Section 2 of the Act said *“if the local government has reason to believe that any tribe, gang or class of persons is addicted to the systematic commission of non-bailable offences, it may report the case to the Governor General in Council, and may request his permission to declare such tribe, gang or class to be a criminal tribe.”* All the other provisions of the Act were meant to subjugate very basic rights of wandering people. For instance the Act had provision of “reformatory settlement”, to which any such notified tribe could be brought based on recommendation of local government. Chharanagar in Ahmedabad was one such

“reformatory settlement”, which was intended to rehabilitate and civilise nomadic people of Chhara, Bhat and Kanjar communities. These communities had to register themselves with the local magistrate, failing to which cases were filed under various provision of IPC. These communities were denied basic rights such as choice of settlement, parenting a child, buying a gift or even performing their own songs, dances and other art forms. If the person was found beyond his/her prescribed limit of the residence without proper permission or any person who tried to escape from “reformatory settlement” was arrested without warrant. This Act, which was initially applicable to Bombay Presidency, was amended in 1924 and special provisions were made for its application in Madras Presidency.



Born Criminal

In 1947 when the entire country was celebrating the joy of independence, there were thousands of these communities who remained locked inside the “reformatory settlements” as they were “born as criminals”. Their 80 years of mass imprisonment ended only in August 1952, five years after the country got freedom and two years after India had its own written constitution, when the Criminal Tribes Act was repealed. The memory of the long struggle is so strong in people of Chharanagar that they celebrate 30th August 1952 as their Independence Day.

With slight modifications and concessions, the Habitual Offenders Act is no different from its earlier avatar, which aims to subjugate people and violate their basic human rights. The Habitual Offenders Act implies that any person who has past criminal records, even prior to commencement of this Act, come under scanner of police and district administration. The 1952 de-notification process freed these communities from fortified settlements but the condition of communities earlier branded as criminals has not changed. The Act gives powers to state government to direct the District Magistrate to register habitual offenders within the district. Restriction on movement and “corrective training” in settlements are some other important provisions of the Act. Like Gujarat, following the repeal of the Criminal Tribes Act a series of ‘Habitual Offenders’ Acts were passed by various other state governments across India which mirrored the Criminal Tribes Acts in significant ways.

The elders of Chharanagar say that after getting released from the Ahmedabad settlement, the Government did not provide them any livelihood options. The songs, drama and dances were things of past as they were not allowed to practice any of these inside the settlement. Without any skill or incentive, these people were left to make their way in mainstream urban

society, which had undergone a lot of change and “modernisation” in the intervening 80 years (1871 to 1952).

The Chhara men are always under suspicion. On any big festival (like Ganesh Chaturthi, Diwali, Navratri), mass arrest of Chhara men is conducted to avoid any “anti social” activities. Often false cases are foisted on Chharas to meet the target of the police. Other DNTs living in and around big cities of Ahmedabad and Baroda have similar stories to tell, though Chhara Nagar of Ahmedabad is considered as most stigmatised in the eyes of law and society. It is also because of the fact that Chhara community had the longest stay in Ahmedabad reformatory settlement.

There are several instances across the country, where branding these communities as criminals still continues. On the incidence of serial murders in Uttar Pradesh in 2001, the Home Minister called de-notified tribes as culprits in the Lok Sabha.⁹ He even made a statement saying *“the investigation on murders has clearly pointed out that culprits are same people who were declared as criminal tribe during British Rule”*¹⁰. The colonial mindset of “reforming and civilising” these people is also seen in attitude of the police and administration. According to people of Sabarmati Tola, the workers of social welfare department visit their basti and take men, women and children in their van to “reform” them.



Systemic Exclusion

The fight for livelihood, land and shelter is common across all nomadic communities. The local NGOs help these communities gain access to common land, panchayat land or undisputed government land and they put these options before the revenue department¹¹ for permission. Many families of various nomadic communities have got access to such lands and have received patta to build houses while many more are still struggling to fulfil this basic need.

Apart from safeguarding the basic right¹² to life and livelihood, the Constitution of India makes provisions for the protection of scheduled castes and scheduled tribes stipulating appointments of a national commission to investigate the conditions of these communities. In addition, the Constitution guarantees the implementation of welfare schemes and provides for special reservation of seats in the Legislature and Panchayats (Article 275 (1¹³), Article 243). To protect the civil and political rights of scheduled castes and scheduled tribes, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act¹⁴ was enacted in

1989. The exclusion of many nomadic communities from SC or ST category denies them legislative safeguards and benefits. Denied from the right to shelter and basic facilities, the livelihoods of these communities are severely affected. In the process of exclusion, their valuable contribution in providing essential goods and services to society remains unacknowledged.

In 1998, the struggle to access freedom, dignity and livelihood was initiated by like minded individuals, academicians and activists through the setting up of the Denotified and Nomadic Tribes and Communities Right Action Group. The movement spearheaded by Mahasweta Devi and Dr. G N Devy, was joined by several activists like Atmaram Rathod, Lakshman Gaikwad, Anil Kumar Pandey, Kanji Patel, Ratan Katyayni. The brutal killing of Budhan Sabar (Purulia, West Bengal) in police custody spurred the formation of this group. Mahasweta Devi filed a PIL in the Calcutta High Court. The police officers responsible were suspended, a CBI inquiry is on and Budhan's widow was awarded a compensation of Rs 1 lakh. Chharas of Ahmedabad have formed Budhan theatre group. Dakshin Bajrange has mobilized Chhara children and youth and they perform contemporary tribal, nomadic and DNT issues. They have also taken up issues on child trafficking and pornography. Dakshin Bhai says *"Chharas have lot of energy. It is important to divert this in a positive direction. The theatre has acted as platform to sensitize society, youth and also police towards us"*. But not every community has the opportunity to change the stereotypes which society and administration project on them.

The provisions of the Constitution like Articles 14 (equality before the law), Article 15 (prohibition of discrimination), and Article 21 (protection of life and personal liberty) is like dream for millions of nomads and DNTs. India is party to several conventions on civil rights, important ones being the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) but the applicability of these conventions to DNT have been ignored. The UN Commission on Human Rights has recommended the abolition of the Habitual Offenders Act in 2005: but the efforts from central or state governments towards this are not visible.



Is settlement a solution?

In the last two decades there have been efforts to settle nomadic and DNT communities through land entitlements and the right to adequate housing. Recognising citizenship rights by issuing voters' identity card ration card and below poverty line (BPL) card are some other efforts to bring these communities into the mainstream development process. However legal and administrative mechanism to check the social discrimination and violence these communities face is not in place. Settlement has helped some of these communities gain access to health, education and livelihood, but for most of them the struggle continues. On the one hand their nomadic way of life is not acceptable to the mainstream society and on the other the process of settlement is not supported by the government and society.

Most of these communities feel that livelihood and shelter are the most critical needs along with retaining their identity and traditions. Adding to this dilemma is the lack of rehabilitation policy or any guidelines at national and state level protecting the rights and identity of these communities. The National Rehabilitation Policy, 2006¹⁵ and the Draft Tribal Policy, 2006 have bypassed the concerns and context of nomadic communities. The variation in the official status of these communities further adds to the confusion. Some belong to OBC and ST, while majority of them belong to SC category and hence there is no ministry or department which includes these communities within their mandate. The SC and ST (Prevention of Atrocities Act) 1989 also does not apply to de-notified tribal communities (DNT). Thus, the communities who were listed in Criminal Tribes Act, 1871 are not eligible to recourse of this act to protect their civil and human rights. With the formation of the National Commission¹⁶ on denotified, nomadic and semi-nomadic tribes in February 2006 under the Ministry of Social Justice and Empowerment, there is new hope, that prolonged struggle of these communities will result in a better future.



Nomadic communities in Rajasthan¹⁷

Rajasthan, the largest state in India with an area of 342236 sq km¹⁸, is home to a substantial proportion of adivasi and nomadic communities. It is also the land of origin for many other nomadic communities who have migrated to different parts of the country. Geographically, Rajasthan is diverse with hilly and forested tracts in eastern and southern parts and extensive tracts of arid deserts in western side of the state. The Aravali ranges with rich flora, fauna and

mineral resources provide shelter to many nomadic communities. These communities are identified and named according to their traditional occupations such as the traders of salt and cattle are known as banjaras, the bhopas, who recite myths through song and dance, the hunters and trekkers are the bawarias, the gadiya lohars are the blacksmith traders, the kalbelias or saperas are the snake charmers and the nats are those who perform acrobatics during festivities.



History and descent

Each of these nomadic communities, while sharing a nomadic way of life is unique in terms of their traditional occupation and cultural practices. Most communities in Alwar district feel that they had status during the Mughal rule in Delhi and Rajput rule in Rajasthan. Some strongly feel that they were Rajputs (Kshatriya¹⁹) who gradually got isolated from society and economy during the time Mughals conquered the Rajputs.

The gadiya lohar, ("blacksmith who travels in the cart"), community associates itself with Maharana Pratap of Chittor, a powerful Rajput ruler of 16th century AD. Rohtas, a member of gadiya lohar community in Khairthal village, says *"We were thakurs (Rajputs²⁰) in Chittor and were Maharana Pratap's army. Our ancestors were skilful and they helped Maharana's army to make powerful iron weapons. One day one of our family members killed a Brahmin and his cow. The Brahmin cursed our community and since then we have become nomads."*

Other nomadic communities have similar stories to tell. For instance, the banjaras also think that their ancestors were Rajputs and they were native to Marwar and Jodhpur. The banjara community had the stronghold in trade and transportation of valuable goods, such as wool, silk, precious stones and sugar. Common belief has it that Baba Ramdeora, a famous saint from Jodhpur, cursed them for being cheated by the head of the community Lakhi Banjara. And, since then their trade of valuable goods, changed into transportation of salt and construction materials on donkeys. Till date, the banjara community from Rajasthan and Gujarat worship Baba Ramdeora, to protect their family and society from any calamity and disease.

The extent of exclusion can be assessed from the experiences of Sardari, a member of the banjara community, as she is trying to settle in Bansoor village in Alwar district. Despite having material things for a secured life such as a patch of land and loan to construct a house²¹, her otherwise settled life is marred with the unequal treatment meted out to her by society. She is not allowed to use the community hand pump within the village and her

children are not able to go to school, as other castes consider them impure.

The case of Sua Bawaria clearly reflects the apathy of local administration towards the atrocities on nomads. Sua Bawaria and his extended family, settled in the outskirts of village of Virat Nagar in Japiur District, Rajasthan, worked as agricultural labourers and chowkidars (night watchmen) in village farms. This, otherwise symbiotic relationship, was treated with hostility by the villagers as Sua and his extended family were termed as encroachers on village common land. In 1999, his hut was set on fire, when the family was asleep inside the hut. The fire resulted in the loss of life of his 6 day old grandchild. This was neither investigated formally by the municipal law enforcement authorities nor did the government provide any compensation or aid to the affected family. On the contrary, Sua was arrested by the land administration officer on the charge of illegal land encroachment in 2000. His case is still pending as he continues his struggle for justice with the help of a local NGO.

The case of Kamala Loharan, who lives on a cart near Thana Gazi (Alwar district) market, exemplifies the nature and extent of discrimination nomads face. Like her there are 20 families who received grants from the government to build houses. However, with the delay in getting the instalments, it has become impossible for them to complete the houses. They are forced to stay in the open and this leaves the young girls particularly vulnerable. The livelihood of communities such as lohars has been affected as they find it difficult to match the increasing rise in the price of steel. With people preferring to use steel, ceramics, plastics, the products of iron are hard to sell. Kamala says, *“Ab to steel, ceramics aur plastic kaa zamana hai. Hum aur humare bartan kis kaam ke”* (Now people use steel, plastic and ceramics, what is the use of utensils I make?).

These communities have been forced to adopt new means of livelihood abandoning their traditional occupations. Most of them have become daily wage labourers, locally known as “beldar”. Some of them have even migrated to metros like Delhi in search of work and wages where they can keep their nomadic identity hidden. Communities with traditional occupations of singing and playing instruments are now turning towards the new hotels²² coming up in Alwar to earn a living. Kailash Bhopa performs the sarangi (a classical string instrument) and sings bhajans (prayer songs) of Baba Ramdeora and Babuji Mehraj to earn a living. During the tourist season he and other community members perform in Neemrana Fort and other tourist attractions in Alwar and earn about Rs.100-200 per day. However, this is not a sustained source of income and they have to work as daily wage labourers when they are not performing.

The condition of communities who were directly dependent on forests and wildlife for their livelihood is the worst. The Wild Life (Protection) Act, 1972 (Chapter III, Section 4)

prohibits hunting of any wild animal, or its possession by any human being. Sapera Kesar Nath of Dadar village wants to conserve the traditional occupation and he feels that contrary to common belief, sapera community contributes to protection and conservation of endangered species of reptiles. They also make medicines and provide treatment to the people affected by snakes and other insects. Today, due to regulations of the forest department, none of the members from his community can engage in their traditional work of snake charming. They face the danger of imprisonment if they engage in their traditional work. This has resulted in some of them migrating to Delhi to work as daily wage labourers and some others earn a living by selling products in petty shops.

The condition of bawaria community and others who directly depend on the forest is even worse. As one of the communities listed in Criminal Tribes Act and also in Habitual Offenders' Act²³, they are still being labelled as criminals. The bawarias were famed hunters, who made a living from killing wild animals and selling their parts in local villages or for self consumption. In fact, historical records suggest that bawarias, known for their ability to track down animals, assisted members from the royal families in hunting.²⁴ With hunting now banned and most of them face harassment from the police and forest departments. Bhagwan Sahay Bawaria, a traditional hunter, now works as a chowkidar (night watchman) on daily wage basis in Paladi village in Alwar. He has been jailed for his connection with the poaching case in Sariska National Park, although he claims that he has not done any hunting in the last 20 years.

Other nomadic communities are also dependent on the forest for fodder and fuel. The regulations of forest department have restricted the access of these people to the forest. These communities in Rajasthan neither have the tribal status nor are they considered part of other forest dwelling communities as they lack of permanent shelter in the forest. Thus customary rights of these communities over forest resources are disregarded by the government. The recently passed 'The Scheduled Tribes and Other Forest Dwellers (Forest Rights) Act, 2006' has the scope and provision to recognise the rights of these communities provided appropriate rules are prepared to ensure their rights as provided for in the Act.



Nomads in Gujarat **Fading art forms and threat from modern developments²⁵**

Nomads in Gujarat are known for traditional art forms, ranging from songs, dances, acrobatic arts, magic, snake charming to traditional healing and medicines. In the cities

of Ahmedabad and Baroda, the lack of opportunity to practice traditional occupations has marginalised these art forms. The traditional drama and dance forms of Chhara, the skills of Bajania in playing instruments, the skills of Bahurupis on making several disguises are on verge of disappearance. They have adapted on occasion and modified these art forms based on popular demand of people. Naval Bhai lives in Bajewali kee Chali, Kuber Nagar, Ahmedabad and belongs to Bajania community. He specializes in playing the dhol²⁶ and shehnai and has learned Sindhi folk music and Hindustani classical music from his ancestors who migrated from Sindh (Pakistan). He says that generations who were born and brought up in India were not taught these arts and the new generation does not see it as a sustainable option.

Most of the younger lot have started working as daily wage workers. Those who could afford have bought or hired auto rickshaw and that is how a living is made. He says *“people these days prefer Bollywood film music during weddings and festivals. Apart from few Sindhi families, there is hardly anyone in Ahmedabad who wants classical or Sindhi folk music. I have also started playing film music just to run my household.”*

Earning livelihood by performing songs, dances and drama is not seen as being civilised by the society at large. Naryan Bhai of Daure Gosai community says *“same high society people are ready to pay money for movies, which has mostly songs and dances. But they cannot pay us for our performance. Why is a performance by DNT not considered as civilised?”*

Putting pressure on these fading skills is the threat from modern developments. As a part of city beautification, the threat of displacement looms large. Bajania Basti in Manjhal Pur has been given eviction notice by Baroda Municipal Corporation (BMC), as BMC has plans to widen the roads and the location of Manjhalpur is seen as constraint to their plans. Like Manjhalpur, there are several DNT Bastis evicted in the name of development.²⁷ The Sabarmati Tola in Ahmedabad inhabited by the Chhara community is also expected to be evicted due to upcoming mega city projects in Ahmedabad and Gandhinagar.

In rural areas of Panchmahal district one can see several nomadic groups still continuing with their traditional occupations. But the challenge here is sustainability of traditional forms due to their seasonal nature. Some people who have their own cultivable land and permanent shelter are in a better position to preserve their traditional art forms. Nat Gala Bhai Natha Bhai and his community members in Nimda Phalia village (near Loonawada, Panchmahal district) is one such example. They got the village and lands to cultivate as a reward from Raja Veer Bhadra Singh of Loonawada about 100 years ago. They claim that they are Raj Nats who performed for local kings and zamindars. Now every Nat family in the village has a permanent house and piece of land to cultivate. All men above 15 years of

age are trained in traditional acrobatic arts of the Nat community and the whole village is divided into eight groups of performers. Normally one group has 8-10 members, and each of them specialise in a different aspect of the art. Some play the dhol, some specialise in acrobatic skills, while some perform on the rope joining two poles at a height of about 25-30 feet. Women do not perform and they help in agriculture and household work.

After Diwali each of these groups starts travelling in different directions and performs from village to village. Khera, Panchmahal, Dahod, Chota Udaipur in Gujarat and Dungarpur in Rajasthan are some places where they go each year. Nat Gala bhai feels that television, films and other modern forms of entertainment have affected relevance of their art, but it is mostly in cities. His groups used to perform in Ahmedabad, Surat and Baroda, but in recent years they have stopped. In rural areas there are many people who come to see their performance. Gala bhai says *“to face the challenge from the modern and keep our art alive we have also modified our style a bit. The casio keyboard has replaced the traditional dhol, while amplifier and woofer are commonly used to attract peoples’ attention. We provide the cheapest and most accessible means of entertainment, especially to rural people. We do not ask for any ticket or money. Whatever little people give, it is enough for us.”*

The story of other performing communities in Panchmahal is unfortunately not same. People, who do not have an alternate means of livelihood, do not want to invest their time and energy in keeping their art alive. Many of them work in other peoples’ agricultural fields, work as daily wage labourers at construction sites or simply migrate to urban centres in search of livelihood.

Similar to Nats, Bispara²⁸ specialise in acrobatic arts and a key feature is performance on pole and rope. For the last 50 years the Bispara community has been staying in village Lavana, Taluk Khanpur, Panchmahal district. Like the Nats of Nimda Phalia, they also claim to be Raj Nats but they did not receive any reward from local Rajas and therefore, they do not have land to cultivate. Jayanti Bhai Nat, one of the senior members of the community recalls the days when “khel tamasha” (plays, acrobatic arts) was integral to their lives. Boys were trained on playing the dhol, while young girls were taught acrobatic skills (called kasrat). They travelled to different parts of Gujarat and Rajasthan and performed. The men also specialised in making ropes from “Khajur Kee Jhaad” (the date tree), which they brought from Rajasthan. Now both these activities have stopped. For bringing the date plant, he has to spend more than Rs. 1,500. Jayanti bhai feels that due to poverty, the nutrition level in girls and young women is very low and they are not able to perform the art, which require a lot of energy and stamina. Men have started working as daily wage labourers, while women have started “chutti bhiksha” or casual begging.

The cases of police abuse are not often seen in rural areas. However communities, whose performance was dependent on wild animals (snake, bear, monkeys), have been affected due to stringent regulation towards protection of wildlife. In Gujarat, the population of such community is approximately 3 lakh. They live a nomadic life and are scattered throughout the state while retaining strong ties of tradition and culture. These communities have their own customary Panchayat and there are specific rules and provision about catching, keeping, performing with and releasing snakes in jungle. As practising such occupation has become a crime in the eyes of law, many of such people have become Sadhus or astrologers. Baba Veeram Nath, who belongs to one such community, says *"I have stopped snake charming. But the police are suspicious of us. They think we are involved in child trafficking incidents, which is on the rise."*

Ratan Lal Mangi Lal Bahurupi is 55-year-old, head of Bhaurupi community. Along with others of his community he lives in a temporary shelter (made of plastic sheets) along the extremely busy Ahmedabad-Gandhinagar expressway and has been living there for the last 10 years. Ratan Lal originally belongs to Ujjain district (Sarsana village) in Madhya Pradesh. He can make 52 bheshas (disguises), ranging from mythological characters, to film stars, policemen, lawyer etc. They earn their livelihood by performing in uptown apartments of Ahmedabad and local festivals. Ratan Lal feels that people have no respect for Bahurupis any more. For any theft in neighbourhood, they are the first suspects. The new forms of entertainment and leisure have made the Bahurupis' art form irrelevant to modern urban society. He says *"I have got a ration card, voters' id card but are they going to give me livelihood? In earlier times rajas used to give us time, place and reward us for our performance. Here people think our community is a nuisance to their wide beautiful highway."*

Bajaniyas are the community who traditionally played the dhol and shehnai in weddings and festivals. Village Chani near Baroda has one hamlet of Bajania community. The work is seasonal in nature as weddings and festivals happen only during certain months of the year. Women work as housemaids in upper caste houses, while men do not have a permanent source of income. The men every morning at about 6 am go near the bus stop, where there is open bidding for daily wage work. If people are lucky, they get work or else they have to return home empty handed. There is no access to education and health care services.

78 year old Pranchi Shyamji (called Pranchi dadi) recalls how her father and the entire family were arrested because her father stole somebody's goat. Her family and she were put in one of the reformatory settlements near Dhule (Maharashtra). The Police Superintendent arranged her marriage with Shyamji Bajrange of Ahmedabad settlement and she was shifted to Ahmedabad. She feels that settlement was made to make them good citizens of the country, but the ways were extremely inhuman. The young women and girls constantly

feared sexual abuse and the policemen at all times monitored them, no matter how “private” the activity.

In the absence of livelihood options and freedom to practice traditional occupations, some people have also tried to adopt modern and more socially acceptable forms to earn livelihood. The efforts to get good education and degrees also have not helped them to make a choice of living. For instance, in another Chhara Basti, called Sabarmati tola, there are several graduates and post graduates. One of them is Jay Kumar Jadega, whose ancestors migrated from Jodhpur, Rajasthan. Jay Kumar says *“there are several educated unemployed youths like me in this basti. We have tried our best to get the jobs, but a Chhara can never get a job, which gives him dignity and livelihood together. Wherever we have gone, we have been refused for some reason or other. Most of us work as labourers. Our ancestors were illiterate. The newer generation got educated but it has no value to our lives.”*

endnotes

1. The social category generally known as the Denotified and Nomadic tribes of India covers a population approximately of six crores. Some of them are included in the list of Scheduled castes, some others in the Scheduled Castes, some others in the Scheduled Tribes, and quite a few in Other Backward Classes. But there are many of these tribes which find place in none of the above. G N Devy The Branded Tribes of India PUCL bulletin 1998
2. “De-notified and Nomadic Tribes: A Perspective” by Milind Bokil, Economic and Political Weekly, January 12, 2002
3. “Adivasis: Legal Provisions, Languages, Locations” by Bhasha Research and Publication Centre, 2004
4. Dr. G N Devy personal interview September 2005
5. This is perhaps akin to the feelings and stereotypes attached to gypsies in Europe. Their itinerant lifestyles, non-conventional behaviours and mystical image brought them under governmental suspicion from the early Middle Ages on. They were fairly consistently defined as “stateless” wanderers, a threat to the moral order and a burden upon society
6. The Criminal Tribes Act, 1871, introduced by the British rulers labelled people belonging to 160 communities across the country as “born criminals” including the Bawarias, Pardhis and Sansis, all of whom are considered criminal by their very birth. (Ref: Frontline Volume

- 19 - Issue 12, June 8-21, 2002, "Suspects forever, Members of the "denotified tribes" continue to bear the brunt of police brutality", S. Viswanathan)
7. The communities that were notified under the Criminal Tribes Act, 1871 have been de notified following the repealing of the Act and have since been known as Denotified Tribes (DNT). The Madras Province was the first to repeal this Act in 1949. (Ref: Frontline Volume 19 - Issue 12, June 8-21, 2002, "Suspects forever, members of the "denotified tribes" continue to bear the brunt of police brutality", S. Viswanathan)
 8. Criminal Tribes' Act, 1871, Act XXVII
 9. Anil Kumar Pandey in 2001
 10. Jansatta, New Delhi, 3rd August 2001
 11. In Rajasthan land consolidation/acquisition is handled by the revenue department
 12. Olga Tellis v Mumbai Municipal Corporation, 1985, AIR 1986 SC 180, the Supreme Court of India has reaffirmed that shelter and livelihood are integral part of the Right to Life
 13. Article 275(1) of the 'Constitution of India' guarantees grants from the Consolidated Fund of India each year for promoting the welfare of Scheduled Tribes and in pursuance to this constitutional obligation, the Ministry of Tribal Affairs provides fund through a Central Sector Scheme "Grants under Article 275(1) of the Constitution".
 14. The purpose of the Act was to prevent atrocities and help in social inclusion of Dalits into the society.
 15. The draft National Rehabilitation Policy was launched by Ministry of Rural Development in October 2006
 16. The National Commission on de notified, nomadic and semi nomadic tribes started functioning in February 2006 under chairmanship of Balkrishna Renke, a noted activist working with denotified communities in Sholapur, Maharashtra.
 17. This case study is about the nomadic tribes of Rajasthan and the challenges they face due to lack of access to land and livelihoods. They continue to face discrimination and are stereotyped by the mainstream. This case study by Equations is with information support from Muktidhara Sansthan , Alwar, Rajasthan. Muktidhara, literally meaning wave of freedom is an organization that was established in 1991 to secure citizenship right of Rajasthani nomads.
 18. From wikipedia
 19. In Hindu Caste System the Kshatriyas were the warrior caste.
 20. Rajput (from the Sanskrit tatpurusha compound rājaputra, "son of a king") is a Caste among Hindus in India, Pakistan and Nepal. They claim descent from the ancient royal warrior dynasties of Kshatriyas in India and have roots to Rajputana, which is known as Rajasthan after formation of this state in independent India.
 21. She has got patta for the land, and also received instalment for constructing a house.
 22. Alwar has several forts turned into hotel (like Siliserh, Neemrana, etc) under burgeoning tourism development.

23. The Criminal Tribes Act of 1871 was repealed in 1952 and the Habitual Offenders Act was enacted in its place. According to the Habitual Offenders Act, a habitual offender is one who has been a victim of subjective and objective influences and has manifested a set practice in crime, and also presents a danger to society in which she/he lives. The Habitual Offenders are usually hardened criminals - major part of whose life has been spent in jails.
24. The forgotten people, by Bahar Dutt and Muktidhara, August 2003
25. Material on the case study on Nomadic tribes in Gujarat has been contributed by Basha. Founded by Dr. G. N. Devy, Bhasha has been involved in research and publication on nomadic and adivasi issues. It has been at the forefront on advocacy for rights of DNTs, nomadic and adivasi communities.
26. Dhol is a percussion and shehnai a wind musical instrument
27. Outlined by Manish, a volunteer working for DNTs in Baroda
28. In Nats women do not perform, while in Bispara, women are main performers of acrobatic arts



Forests and Adivasis

A conversation with Pradip Prabhu

This interview with Pradip Prabhu by the team of EQUATIONS and Grassroots Media was in December 2004. These are extracts from that conversation which meanders through facts, experiences, philosophy, and history, as it journeyed through the issues and context of the struggle of adivasis and forest dwellers for their rights in the face of an unresponsive state.

What are the conflicts around forest rights of adivasi communities ?

On 3 May 2002, the Inspector General of Forests issued an order to all the chief secretaries and principal chief conservators of forests (PCCF) to evict three million forest dwellers by 30 September 2002, saying that the Supreme Court was seized of the issue of encroachment and an intervention application had been moved. It gave the impression that the court had directed this eviction and, therefore, the IGF was asking all these officials to form a committee at the state level and similar committees at the district level and ensure eviction of all 'encroachers' by 30 September 2002. That brought in very strong resistance. The issue of 'who is an encroacher' was raised; because, lives of three million people and their traditional homelands were in danger.

So, who is an encroacher and what is encroachment?

For that we need to go a little back in history- when the state started taking over forests during the British rule. The process of declaring forest areas as reserved forests made it imperative for the state to appoint settlement officers who were required to give judgement on the rights and claims of the people living in the forest areas. Based on the judgement of the settlement officers, peoples' rights were recorded. Right through the British period, one can see, virtually no 'right to the land' has been recorded. The somewhat insignificant nistar right (which was subsequently made as concession to collect some fire wood, leaves, food items, fruits and things like that) has been recorded. But, the right to land, which people were cultivating, was very often not recorded.

Take Thane district where the records are at least clear. The gazetteer says that Thane district was ceded to the British in 1818. The land here was managed and owned by the communities, so traditionally there were no individual or personal rights to land. Therefore, the British would claim that there were no recorded rights, so to say, or that there were no rights in the form they could understand and, therefore, they did not record it. In Thane district alone, a little over 4 lakh acres of community land was taken over by the British and merged into the forest. So, one realises that in the process of declaration of the forest into a reserved forest, it was the state who was the encroacher. It encroached on what were community lands just because the community lands did not fall into their concept of ownership. For them ownership meant either it is owned by individuals or owned by the state.

The colonial principle of res bullios – which means that ‘whatever does not belong to any individual belongs to the state’ – was an important legal weapon of the British rule to take possession of large tracts of land. Rights were not recorded in the consolidation process of forests. Post-1950, large areas of forests (which were part of princely kingdoms) were also merged into reserved forests. During this process, rights of local people, especially forest dwellers (largely tribals), were again not recorded. Therefore, people who were residing and staying and cultivating for generations suddenly became encroachers in the eyes of the law.

What was the response to this by various forest-rights and adivasi movements?

Following this order, the Campaign for Survival and Dignity (CSD) was formed and large number of organisations came together. One found out that there was no order or direction from the Supreme Court to evict these people, which the Inspector General was alluding into. Therefore, we decided to confront the Inspector General, saying that it was a blatant misrepresentation of the court's orders and, therefore, he was liable to contempt of court. As a result, on 30 October 2004, the Inspector General issued a second letter, which said that the eviction of encroachers did not exclude the implementation of 1990 guidelines. Now, what are these 1990 guidelines?

So far, there have been several committees to look into the issue of land and forest, community ownership, etc. In the British concept of ownership, which India has adopted, there is no concept of community ownership. Dr B D Sharma, in his 29th report, dealt with this issue very extensively. In a letter to the President of India, he raised the very widespread distress and discontent in tribal areas following the fact that tribal rights are unrecognized either in the collective sense or individual sense. Dr Sharma, in his report, had highlighted other issues as well, largely dealing with the tribals in central Indian tracts. People were given certain pattas and leases, which were not regularized till 1980. These people were insecure, since there was threat of eviction. Thousands of forest villages created by the British in the forest and were not converted into revenue villages. The fact that

those villages are not revenue villages denied them legal status and the provision of basic services and development schemes. People were cultivating forest lands in post-settlement period and they were being termed as encroachers. He did not touch the issue of shifting cultivation, which is a sad thing, and no real attention was drawn to this serious problem.

Following Dr Sharma's report, which came in May 1990, an inter-ministerial committee of secretaries was formed by the Government of India to look into the issues raised.

Subsequently, the following four guidelines were issued in 18 Sep 1990.

- *Regularisation of encroachments*
- *Settlement of claims pursuant to defective forest settlements*
- *Regularization of leases and pattas*
- *Conversion of forest villages into revenue villages*

Was post-1990 the period when the government initiated transferring forest rights?

No, it is not like that. From 1990 to 2004, the Supreme Court was intervening, but not really interpreting the Act as much as recreating a Forest Act. One should remember that, in 1981, the forest department had tried to formulate a new Forest Act to which there was very strong resistance in all tribal areas because of certain provisions. The provision that if some one is found in the forest by a forest official and if the official suspected that this person could do damage to the forest, then he had power to take legal action against the person is one such example. So, any tribal walking in the forest also would have attracted a penalty. So, all over the country, there was resistance. Initially, three organisations wrote an open letter to Parliament: Kashtkari Sangathana took the lead and Bhoomi Sena and Shramik Sena also followed. The issue was raised in Parliament and then it became part of wider debate and finally resulted in the Bill being withdrawn. Therefore, the forest department, without a Bill post-Independence, continues to follow a Bill enacted in 1927.

Following this development, the Supreme Court took a few steps. First reserved forests were now totally made 'reserved', irrespective of any settlement process done there or not. For example, there were 14,000 odd compartments that constitute the 'reserved' forest area in Madhya Pradesh. Out of these, settlement was done in 1126 compartments, which, in effect, means 13,000 forest compartments have not been settled at all till date. The forest department, in one note that it had circulated, said that if they were to legalise these compartments, it would take another 100 years to complete the process.

Forest Acts in many states were amended and a new section – Section 20A – was introduced. Section 20 deals with the final declaration of reserved forests. Section 20A talks of deemed

reserved forests. So, they are deemed to be reserved although provisions of Sections 4 to 20 have not been followed. Now, the Supreme Court said that all these reserved forests are under custody of the forest department and did not say a word about the rights of the people over forests. The Court also ruled that any land referred to as 'forest' in any way in official records should be taken into forests.

What are the implications of this move?

In Thane district in Maharashtra, close to 14,000 hectares of land bordering the forest, which were in the hands of landlords, on which there were tenants, was declared as private forests under Section 35. Subsequently, those lands were sold to the tenants under provisions of the Tenancy Act. In 1976, Maharashtra then merged all these areas that came under Section 35 into forest. And these people had no more rights over these lands. What followed was the Supreme Court's order that 'you should take custody of any land that is stated as forest in official records.' In Madhya Pradesh and northern Maharashtra, the entire tract called the 'orange areas' was with the revenue department, and people were cultivating the land. But in record, it was called as chote jhaar, mote jhaar kaa jungle (jungle with small and big trees). So, the forest department started taking over this land as well.

The Court also gave a new definition of forest, lifting its meaning from the dictionary. It turned out to be so that if there were 200 or more standing trees on one acre of land, it fell under the definition the forest. From where this notion of the essential 33% of forest cover for environmental balance has come, no body knows. Given the whole pollution crisis, crisis of ozone layer and crisis of emissions, and the fact that forest actually dissolves and consumes a lot of these emissions, there is now a new pressure developing internationally, particularly by the developed countries, to have more and more green areas. In Europe, there are no natural forests and what they have are mostly plantations. Great Britain had already lost all its forest cover by the time it colonized India. Today, the growing pressure to create forests is actually part of a commercial process; they call it carbon remission units.

A second critical issue is that in the past 15 years, particularly after 1980, there is a growing prominence of the environmentalist lobby, which has created a new notion of forest. The traditional concept of forest was the Aranyaka in which human beings were also part of the overall ecosphere (the biosphere). And the new notion of forest excludes human beings from it, which the Supreme Court seems to be going by. For them, the forest is totally wilderness, and no human beings. What happens, therefore, is that the forests, which were livelihood resources for the poor, are becoming leisure resources for the rich. So, you have wealth and you go into these forests as an eco-tourist and enjoy nature, so to say.

By the interpretation of Supreme Court orders, we find that close to 3 million people face eminent eviction from the central India tracts alone. If one applies Supreme Court orders, for example, to Tripura, one will find that there is no land, the entire area falls under the classification of forest in one way or the other. For Tripura, the state talks of having resettled the whole tribal population. In fact, those who are used to doing shifting cultivation have been resettled in some patches and the rest of the land has been taken control of as forests.

What has been the understanding of forests and how has this changed?

During the British rule the forest became a commercial commodity in two ways: one, sale of timber and, two, clearing the forest lands for agriculture so that from those agricultural lands, they could raise rents.

In the post-Independence period, one does not find forest having any serious mention. The National Agricultural Policy of 1950 mentions forest as a source of revenue. Therefore, a whole process of nation-building was built around the notion of generation of surplus, through increase in productivity. So, you have increase in productivity in agriculture through dams and irrigation, and also through industry. The forest was seen as dispensable because it offered enormous scope for industry and mining.

The change in understanding towards forest came around 1975–78. Mrs Gandhi got seized of the problem and forest, which was till then a state subject, through an amendment became a concurrent subject. Immediately after this, the Conservation Act was passed, which is basically a one-line Act: 'The state government will be restrained to hand over forest land for any non-forest uses.' Mrs Gandhi's sudden conversion was influenced by many factors. The forest was the playground of the rich and famous and forest conservation was an elite enterprise.

For common people and tribals, forest is the source of life and livelihoods. The Chenchus have been hunters and food gatherers with no knowledge of agriculture, and they have lived in the Manimala forest for centuries. Suddenly, you realise that the Manimala forest is good biodiversity and you declare it as national park or sanctuary. The Chenchus have been forced out of their home. They have been given patches of land. They do not know how to cultivate land. Outsiders have now come and taken away that land. And, every time the Chenchus go to the forest to collect some fruit, honey, or catch a bird, they are treated as criminals. There have been reports that the Chenchus are coming out of the forest on highways and begging, and many of them are dying of hunger and starvation.

The Gotu Kohiyas are also going through a similar situation. The Kolas, who are also a community of shifting cultivators on the border of Maharashtra and Andhra Pradesh. Their villages were

burnt. They ran away, had nothing to eat, and died of starvation. Similar is the case with Saharias and Bondos. Shifting cultivation is not recognised. Interestingly there was a comment made in the Draft Tribal Policy 2004 that shifting cultivators have no love for the land. It is like; only when you have private property do you have attachment to the land. What has been transposed continuously is essentially alien jurisprudence on to the people who have lived within a natural system. There is no conclusive evidence that proves that shifting cultivation is bad for the forest. There is also sufficient evidence that says that shifting cultivation is good for the forest, because it weeds out weak trees and allows stronger trees to grow. But, today shifting cultivators have no right to exist. So, they have to be resettled.

What has been the situation since 2004, on the issue of forest rights?

As there was a lot of pressure coming through campaigns, the GOI (the NDA government) passed orders on 3 February 2004 and 5 February 2004 in which they talked about implementing the 1990 guidelines since state governments had not done their duty and not sent in their proposal, etc. The second motive was to broaden their constituency. They put a cut off date. Till now the cut off date for the encroachment issue was more or less 1980. They pushed the cut off date to 31 December 1993. Against which again some environmentalists moved amicus curie and filed intervention application (1126) in the Supreme Court in the Godavarman case.

They found that, by now, under the Godavarman case, there were 1140 interlocutory applications that had been filed, which are more in nature of what one calls in legal language 'collusive suits'. So, the forest department would put up somebody to file intervention applications and then the government would respond saying that 'what is submitted or claimed in this intervention application is essentially valid and legitimate' and of course the Court would pass orders. So, intervention application 1126 was filed and stay was granted by the Supreme Court on all the orders passed by the previous government in 2004.

While all this was going on in the Supreme Court, tremendous pressure was being built on the ground for the government to respond sensibly. Therefore, under these pressures, on 21 July 2004, the MoEF through its Inspector General of Forest, Mr. Bajpai, filed an affidavit in the Supreme Court, where in para number 8, for the first time in history of India, it stated that in process of consolidation of the forest prior to Independence, the British did not record the rights of tribal communities because they were not in recordable forms. Similarly, in the process of consolidation of forests of princely states into the Indian forest after 1950, again no proper process of recording the rights has taken place. This has created a situation what they call 'historic injustice' to tribal communities that their rights have not been recorded and, therefore, this historic injustice has to be rectified and rights have to be recorded.

This was an unusual legal situation. The state has not done its duty that has been required of it by its own law. And, therefore, there are hundreds and thousands of people who are victim of the state's failure to do its duty. Technically, as the argument goes, since there was no legal recognition to peoples' rights, it becomes now illegal to bestow the rights.

So who is responsible for destroying the forests?

The most discredited department in the Indian Union is the forest department and they are responsible for this destruction. But suddenly they are declared the forest's greatest preserver. The fact is that you have adequate forest cover in only 40% of the total area declared as forests. The rest 60% is considered as degraded and wastelands. Of this 40%, 60% of the best forests are in 187 tribal districts, which constitute 20% of the total geographic area of this country. So, one-fifth of the total area has 60% of the country's forests, meaning you have forest where you have tribal communities. Where you do not have tribal communities, you do not have forests. So, the tribals are people, for whom conservation is built in their ethos; forest is a basis of their cultural integrity and is linked with their food security. In a meeting debating the issue of tribal rights and declaration of national parks a senior forest official is reported to have rather insightfully remarked 'the process of declaration of national parks and sanctuaries is not to protect the forest from the people but to protect the forest from the forest department. The moment you declare a national park or sanctuary, they can not do anything to the forest there. And, now the Supreme Court has also passed the orders that they are not permitted to take even dead wood out of the national park or sanctuary.'

There are circles of solidarity among these communities, based on sharing of responsibilities. Within this circle, there is a whole circle of livelihood, which grows from family to habitation to village to the tribe and is circumscribed in the forest as part of the ethos. These circles were the basic structure of human survival and one finds the final circle is of nature and spirits of nature. I remember the argument of tribal communities, which are now of course changing, that 'how do we own land? Because land is Dhartari and Dhartari is our mother.' The tribals are, however, coming under the pressures of modernisation and their worldview is also changing. For a long time, the worldview was 'how could you own dhartari, how does a child own the mother!' The mother is responsible for bringing up, feeding and taking care of the well-being of the child, and the child is responsible for conserving, preserving and ensuring the well-being of the mother.



Displacement and Rehabilitation in Forests of Karnataka¹

EQUATIONS

In areas surrounding the Western Ghat ranges in Karnataka, there is now a state of agitation together with solidarity of various local community networks against forced displacement, poor rehabilitation and eviction, mainly from what has now transpired to be forest lands. The issue came to light with a Supreme Court order (wp 202/95), filed by Godavaraman Thirumulpad of the Nilambur Kovilakam, now based at Malappuram in Kerala. Godavaraman petitioned the Supreme Court to pass strictures against the Tamil Nadu government for not protecting nearly 80,000 ha of forests in Gudalur, taken over by the State under the Tamil Nadu Janmam Lands (Abolition and Conversion into Ryotwari) Act, 1969.

The court took his case and clubbed it with literally hundreds of forest related cases countrywide while giving judgements². Many of the judgements, such as prohibition of transportation of timber and bamboo from protected areas, or of saw mills within a 25-km radius of a national park or wildlife sanctuary have been landmark ones. In this particular petition, the court asked seven states with forests, Orissa, Tamil Nadu, Karnataka, Madhya Pradesh, Chhattisgarh, Maharashtra, and West Bengal and one Union Territory Andaman & Nicobar Islands to take concrete steps to evict and prevent encroachments on forest lands. The court then constituted a central empowered committee (CEC) to assess the situation and appointed Amicus Curiae (a legal overseer) to look into the matters that came up under this petition.

The court's orders were stringent in observing that even 'forest lands' lying within other government departments, or in private hands, were to be taken over by the forest department and conserved. Those individuals holding lands prior to the Forest Conservation

Act's amendment clause in 1980, allowing habitation up to a maximum 3 acres per family were to be allowed to stay on within the limits prescribed. The CEC's orders were equally stringent. Chief secretaries of the concerned states were to set up and chair committees having heads of police and forest departments along with relevant NGO participation to manage evictions.

In Belthangady taluk in Dakshin Kannada district, Karkala in Udupi district, Shringeri, Koppa and Mudgere in Chikmagalur district, all surrounding the Western Ghat ranges in Karnataka there are cases of genuine revenue patta-holders, mostly small time farmers from SC/ST/OBC categories, who now find their lands converted to 'forest lands' as per the Supreme Court order and have been issued eviction notices.

In Belthangady taluk (Dakshina Kannada), the situation was fermenting even before the forest case's orders which came in 2002. Agricultural labourers, mostly dalits and small farmers in this taluk have either encroached small amounts of revenue land during 1950–1990, or have pattas issued to them for these lands. Of the 497 families facing eviction from 1001 acres in Belthangady, there have been approximately 100 pattas issued. Approximately 80 of these families have been settled on their lands before 1978. In Uppinangady, 772 families holding 1690 acres have around 110 pattas issued, with approximately 90 families living there prior to 1978. In Venuru, 89 families holding 65 acres face eviction. In Belthangady, a total of 2756 acres within 1358 families face eviction, which roughly calculates to an average 2 acres per family. A total of 6000 families in Dakshin Kannada are affected by these eviction notices.

Almost all the lands in question have either been encroached prior to 1978, or been regularised in 1994 under the Akrama Sakrama (regularisation of encroachment) policy of the state. The Belthangady based NGO Nagarika Seva Trust (NST), a people's organisation with over 20,000 members, says even pre 1978 settlements, for which there is sufficient evidence of land holdings in terms of pattas, have not been recorded by the forest department. Even these settlements face the danger of eviction. An internal letter³ by the Principal Chief Conservator of Forests (PCCF) states that none of the forest officials, with the exception of the Conservator of Forests of Sirsi have given the details of pre-1978 settlements in spite of repeated circulars.

There are over 20,000 ha of land under the Karnataka Cashew Development Corporation (KCDC) in Dakshin Kannada and Udupi districts, over 5000 acres of rubber plantations in Sullia Taluk and 4000 ha of land leased by the forest department to the Kudremukh Iron Ore Company Ltd. *"Instead of bringing these lands directly under the forest department they are trying to take over a few patches of well-cultivated agricultural land depriving the poor of their only source of livelihood",* says Somnath Nayak of NST.

At Nada village in Belthangady, 78 families with lands that vary from one-tenth to one acre as the maximum limit have been sent eviction notices by the then tehsildar, Shivarudra Swami, now suspended on corruption charges. The notices blame the residents for “falsely representing” the lands as being revenue, thus absolving the revenue department of any guilt or blame in the matter. The gross inefficiency and negligence of the revenue department in not knowing at the time of issuing the patta, that the land was forestland has been quietly stashed aside.

In July 2002, in Kadirudyavara village in Belthangady taluk, forest officials tried to plant saplings on the lands of four farmers whose pattas had been issued by the tehsildar of the revenue department. The move was stalled after strong protests by NST, local people, committees and various other organisations. The case became political when the local ex-minister of the ruling party too opposed the action. There are now various law suits against the forest department in the civil courts.

At Kadirudyavara village, adjoining the Kudremukh National Park (KNP)⁴ in Belthangady, 50 year-old Pushpa Salian, from the Billava community says her father-in-law was issued a patta for 3 acres at Ballubail. She says she has been married over twenty years and came to Ballubail as a bride. The family grows cashew and mango, as well as ginger and vegetables for local markets. The trees yield between 75 to 100 kg of cashew, which they sell unshelled at Rs.30 per kilogram. However, in June 2003, with an eviction notice, the family's acres were taken over by the forest department and seasonal cultivation areas planted over with trees. A thorn fence was erected around the entire plot, barring anyone from entering. After protests by the NST the thorn fence was removed, *“but the trees still remain,”* says Pushpa.

Kadirudyavara village, which is in the buffer zone of KNP, looks forested interspersed with tiny hamlets. The area is quite green and in stark contrast to the degradation of forest lands within mining, dams and other industrial concerns. There are a total of 25 families, quiet and peaceful, living here for generations. Seven families have pattas of which three have been served eviction notices.

Facing penalty for non-action, both forest and revenue departments are now looking at old maps to see where forest lands are located, and evicting only small-time livelihood communities from forest lands. Small farmers and poor people form the most vulnerable and easiest groups to evict, while the rich and politically well connected manage to keep their lands despite being served with notices from the CEC. The government of Karnataka claims in December 2003 that it has reclaimed 36,702 ha from 35,815 families, out of a total 96,021.594 ha that it identified as encroached.

There are even cases of joint family holdings being given selective eviction notices, probably due to the boundary line of forest land crossing through their holdings. Monappa Salian and his brother, in Kadirudyavara jointly working on 1.5 acres of land, were born on the land. Their father came here 50 years ago from Bantwal in Dakshin Kannada. Yet Monappa, not his brother, was served an eviction notice. His young wife, Vanitha, desperately holds out a grubby piece of paper with the revenue official's stamp asking them to vacate forthwith. *"What are we going to do now?"* she asks in tears.

Gopal Poojary, the 60 year old village elder, admits that some of these families have encroached on some land in the fifty years they have been here. *"But the encroachments are small, may be half an acre each, and that too, not all families,"* he points out. HPCLs encroachment to lay a pipeline from Mangalore to Bangalore through the forests was another violation of the law, in spite of the Supreme Court notice on evicting local people from these areas and the protests by local organisations and the local people.

Another problem that people face is bonded labour. For example in Neriya, the Malekudiyas are slaves to the Hebbar family that is cultivating on lands in violation of the law. The Neriya hills are also the home of the Malekudiya tribe, a gentle and simple people. That they have been living here for centuries is borne out by their name 'malekudiya', which means 'children of the hills'. The families concerned have also usurped the original lands of the Malekudiyas. The Hebbars received some of these forests as gifts, (the exact acreage is still unknown) during the years before independence for services rendered to the British, but there are no known records of how this came about. The family currently of four brothers own approximately 11,000 acres of Neriya, supposedly under cardamom and rubber plantations. But a day's drive through these beautiful forests show how dense the original forest cover still is, interspersed here and there with rubber plots, cardamom and pepper vines.

In order to sidestep the government confiscating their lands under the Karnataka Land Reforms Act 1961, which puts a ceiling of ten acres of 'wet lands' (or moist tropical soils) per individual, the brothers formed a company called Neriya Estate Rural Industries under the Companies Act 1956, and 'leased' their lands (a little over 2745 acres 'officially') to the company to grow cardamom, pepper, coffee and cocoa plantations, since plantations are allowed in unlimited holdings.

The Land Reform Act had further loopholes that allowed a company to act as 'tenant' to conduct agricultural plantations for an individual landowner, but was amended in 1974 to omit this clause. The government, inexplicably silent for ten years after this amendment, finally took Neriya Enterprises, sitting comfortably for twenty years, to court in 1984 for illegally occupying nearly 2750 acres of rich forests.

The government's clause was the illegality of a company claiming tenancy lease on agricultural lands belonging to individuals who are anyway in violation of the Land Reforms Act for owning 11,000 odd acres of land. The Hebbar lost the case soundly, but appealed to the Supreme Court in 1996, only to withdraw their case after realising their weak case. So technically speaking, the Hebbar brothers are currently sitting illegally on nearly 11,000 acres of forest lands in Neriya, and have been doing so for decades.

But Raghava Hebbar, Managing Director of Neriya Industries denies that he now has no legal rights over the lands having lost the appeal in the Supreme Court. *"My case is not withdrawn. I have nothing more to say"*, he said eventually, after several attempts at avoiding all questions.

The Hebbar family had also tied the Malekudiya tribe into slavery during the colonial days, and retained them as bonded labour till as late as 1976 when the Abolition of the Bonded Labour Act made this illegal, and an outcry on the Malekudiya situation was brought to notice by the local media. In 1984, the government granted 21 pattas to the Malekudiya families living in Neriya.

Another crisis was the laying of the pipeline from Mangalore to Bangalore through the Neriya forests. In 2001, 16 elephants, including two tuskers and three calves were found marooned in the Neriya forests, unable to find their natural migratory route to the Pushpagiri Sanctuary. The incident was the first of its kind, and the Malekudiya say that it happened because of the widespread deforestation from timber felling by individuals and by the oil pipeline company. The pipeline has affected the traditional elephant corridor between the Bhadra and Pushpagiri wildlife sanctuaries. The team that conducted the research prior to the setting up of the pipeline had also warned of the increased elephant-human confrontations that were likely to occur if the forests were cut down. The pipeline was laid anyway, in spite of the protests that were initiated by the local organizations like the Anti HPCL Pipeline Committee, Dakshina Kannada Parisarasakta Okkoota, NST and the Mahila Vedike. The local villagers and the Malekudiya have also pointed out that permissions for the work were not taken from the Gram Panchayat in the region and a writ petition had also been filed protesting against the violation of the panchayat powers.

From more recent information, according to a study done by local NGO CORD, more than 3650 families evicted have not received any rehabilitation package. Around 30,000 tribals have been displaced due to the implementation of projects like eco tourism, and declaration of new national parks like Kudremukh. To meet their livelihood needs, most of the adivasis now work for meagre wages as coolies in nearby coffee plantations. Many tribals have sold their children as domestic workers to the urban rich over the past decade.

The Kudremukh Rashtriya Udayanavasi Samrakshna Samithi (KRUSS), headed by its convenor Vasanthi, was formed with help from NST to help the KNP tribal families fight for their rights. There are 54 families in Kothlur, inside KNP, with lands varying from half an acre to 5 acres, with the majority being one-acre holdings. They have been cultivating paddy and coconut “from the beginning”, says Vasanthi. With the forest authorities barring the use of non-timber forest produce from the park, the families have also taken to areca nut cultivation in the last 20 years.

Their agitation against eviction, or alternatively, for better resettlement, has been an ongoing one for almost a decade now. But the community is disbelieving of the government’s promise of decent re-settlement, with some having seen the inadequately rehabilitated settlements of the Rajiv Gandhi National Park (Nagarahole) tribal oustees. *“How can we live in cement boxes, when we have lived peacefully in our natural surroundings (inside KNP) from ever since we can remember?”* asks Vasanthi.

There is a proposal to resettle 843 families living in the 27 hamlets falling in the Kodagu part and another 506 families in 24 hamlets of Mysore part, in an area of 3050 acres. Majority of the people have already experienced displacement more than once, when the area was declared a sanctuary and major dams were constructed across the rivers Kabini, Tharaka and Nugu.

endnotes

1. This case study focuses on conflicts around land when the government declares areas as forests, National Parks, or displacements because of the construction of dams and pipelines and how it dispossess tribals and the poor. The primary investigation research and compilation of findings was done by Keya Acharya in May 2005.
2. Since 1996 the Supreme Court of India has played a key role as decision maker and monitoring agency so far as wildlife and forest related issues are concerned. In India today no dead trees, grasses, driftwood etc can be removed except with the prior permission of the Supreme Court. Also no forest/National Park or Sanctuary can be dereserved without prior approval of the Supreme Court. The Supreme Court’s intervention in the following two cases related to forests and wildlife has been extremely critical:
 1. The T.N. Godavaraman Thirumulkpad v/s Union of India and ors (Writ Petition 202 of

1995), concerning implementation of the Forest Conservation Act, 1980.

2. The Centre for Environmental Law (CEL) v/s Union of India and ors (Writ Petition 337 of 1995) concerning the issue of settlement of rights in National Parks and Sanctuaries and other issues under the Wild Life (Protection) Act, 1972

These cases are being heard since then as part of what is known as the continuing mandamus, whereby courts rather than passing final judgements, keep passing orders and directions with a view of monitoring the functioning of the executive.

www.forestcaseupdate.org

3. Dated 16.4.2001 (A5(4) BRL/CR/24/79-80)

4. KNP covers and borders three districts in KNP: Dakshin Kannada, Udipi and Chikmagalur



Todas in the Line of Fire¹

EQUATIONS

The Nilgiris Biosphere Reserve (NBR) comprises the protected forests of Wayanad, Nagarhole, Bandipur and Mudumalai, the entire forested hill slopes of Nilambur, the Upper Nilgiri plateau, Silent Valley and the Siruvani hills. The area consists of different habitat types, unspoiled areas of natural vegetation with several dry scrub, dry and moist deciduous, semi evergreen and wet evergreen forests, evergreen shoals, grass lands and swamps. It includes the largest known population of two endangered animal species, namely the Nilgiri Tahr and the Lion-tailed macaque and the largest South Indian population of elephant, tiger, gaur, sambar and chital as well as a good number of endemic and endangered plants. Ootacamund and Gudalur are encircled by the NBR and possess much of the uniqueness of flora, fauna and ecological biodiversity of the NBR.

The traditional pastoral communities specially the tribal communities like the Todas, Irulas, Paliyars, Konars and herders of the 'Umblacherry' breed of cattle mainly around NBR face crisis of livelihoods and cultural heritage. This case study focuses on the Toda community that has been facing severe land alienation primarily due to confiscation of their land initially by the Badagas – a migrant ethnic community from Karnataka and later by the British, only to be finally retained as forest land by the local government after independence.

Todas were once the original inhabitants and owners of land in the Nilgiri hills, and the most well-known of the Nilgiri's six primitive tribes. They believe that their ancestors inhabited the Nilgiris hills since the beginning of humankind. The Todas are pastoral herdsman and their lifestyle, culture and livelihood revolves around their buffalo, a unique species found only in these hills and with the Irula tribes of Thalavadi in Erode, in southern Tamil Nadu. Their language, though of Dravidian origin, has no script. The popular belief among the community suggests that Goddess Teikirshy and her brother first created the buffalo by

waving a magic wand, and then created the Toda man. The first Toda woman was created from the right rib of the man. The Toda women have great skills in embroidery work – with their embroidery garments in great demand with visitors from other parts of India and abroad.

The Toda buffalo is used as a social and cultural tool in Toda families as it is considered precious to be gifted in marriages, deaths and births and used for company. Considered more valuable than gold, a family's worth was not measured by money, education, job or social status, but by the number of buffalo heads owned in earlier times. The Todas worshipped the animal for centuries as it was a sacred and very valuable asset to the community.

Their original grazing lands occupied an area of rolling grasslands, now known as the 'Wenlock Downs'. The area was originally approximately 1000 acres broken up by several layers of hills, including impressive peaks above 2400 m. The British colonial administration in the 1800s confiscated large tracts of Toda lands, including over 1000 acres of the famous 'Wenlock Downs'. Some of the confiscated lands were used for tea and coffee plantations and some as 'reserved forests' of eucalyptus plantations for earning revenue. Some of these lands were set apart as Toda 'patta lands' over which the Toda had 'partial' right to live, graze their cattle and cultivate.

However, these 'partial' rights have neither helped conserve the Nilgiris' rich ecology nor alleviated the Toda's problems. Traditionally the Todas followed a rotational system of buffalo grazing that helped the local grasses remain well-cropped and non-invasive and prevented forest fires. Additionally, indigenous flowers, shrubs, growing on the forest floor of traditional shoal forests, fulfilled the health and medicinal needs of the buffalo. The loss of grazing lands has proved fatal to the buffalo's survival.

The process of nurturing and breeding such species fed into building an entire social institution and culture among the tribes that kept these animals. For pastoral societies, the value of livestock is equivalent to that of land for farmers. Female animals represent capital that is never sold to anybody outside the tribe or community very much to the contrast of a practice in Indian social culture. They are passed on from one generation to the next, or may be given as usufruct loan to less fortunate relatives. And in so doing, the community thus becomes a genetic stock pool of the breed. With the breakdown of these cultures, India's genetic diversity is now gravely threatened. Tribes are now selling animals for emergency monetary needs and the careful re-stocking of the gene pool that had happened for centuries is now leading to indiscriminate exchanges of animals between different ethnic groups thus increasing genetic homogeneity.

Conversely, the Toda population with a pastoral way of living too has suffered with declining livelihood drawn from the buffalo, declining social interaction and traditions. This in spite of the community's youth wanting to stay on in their mountain villages with their buffaloes, quite in contrast to the trend of migration to urban locations today. *"A Toda is nothing without his buffalo"*, says K. Vasamalli, the community's first of four women graduates.

Increased conflict with wild animals due to the increase in number of plantations, drinking water problems due to increased toxic effluent in the water system, plastic consumption and human allergy problems are causing large decline in buffalo population. Besides this, the Ooty Municipality is dumping garbage on what is left of the Toda grazing areas; tourists and 'filming crew' abound on the downs, creating both noise and nuisance.

Losing interest in agriculture, many have become poorer by leasing their remaining lands for a pittance to farmers the majority of whom come from neighbouring Karnataka. The challenge before the state and the community today is to be able to garner and integrate modern benefits like higher education into their mountain lifestyle. The Toda family gets a meagre Rs.10000-15000 annually per acre from the cultivator although the lessee is earning well over ten times the amount from the fertile land. Their affluence is visible as most of them own more than one vehicle, have good housing, are better clothed, healthy and their children educated.

In what was, and still is, a rare departure from forest department's attitude towards local communities surrounding protected areas, the government decided to hand over 1200 acres of earlier Toda lands planted with eucalyptus back to the Toda.

The forest department wants shola regeneration done their way. The Todas say natural regeneration can only happen if the eucalyptus is completely uprooted. Although the government order was passed in 2004, the ownership and control of the land remains only on paper. Apart from land to graze their buffalo, the community also needs access to health care and veterinary care, protection against the influx of tourism and dumping of plastics, uprooting of introduced weeds, and treatment of effluent before it is released, etc.

endnotes

1. This case study focuses on the Todas of the Nilgiris and how developmental activities and conversely, conservation activities by the Forest Department are depriving them of their rights to land and resources as well as their traditional way of living. The preliminary fact finding and compilation of report was done by Keya Acharya in May 2005.



Provisions of PESA Act, 1996

Violations in Raigarh District of Chhattisgarh¹

Ramesh Chandra Sharma

The Indian Parliament passed the “Madhya Pradesh Reorganisation Act 2000” to grant separate statehood to Chhattisgarh with sixteen south-eastern districts² from the erstwhile undivided Madhya Pradesh. The creation of Chhattisgarh as a separate state was a response to the democratic demand raised by the people this region since 1925.

The first policy document introduced by the state after its formation was its industrial policy (2004-2009) launched by Commerce and Industries department. The industrial policy of Chhattisgarh for the period 2004–09 says, *“Chhattisgarh is a 21st century state, with abundant natural resources. The Government of Chhattisgarh, to speed up the development, is promoting industrial growth through exploiting the abundant resources in the virgin areas. Industries have been spread in all parts of the state and, therefore, use the maximum of resources to increase industrial growth rate.”*

The state has a high tribal population (34%), with one-third of its total area falling within the jurisdiction of the PESA act. The chief minister of Chhattisgarh perhaps forgot this fact while outlining the state’s vision for development to a packed house of National Development Council members in 2001. This vision ignored aspirations of adivasis and landless and poor people, and he even stated most categorical that the foundation of Chhattisgarh would be (only) industrialization. Further, the declaration of tribal-dominated districts of Dantewara, Jashpur, Koriya, Surguja and Kavardha as Special Industrial Zone in its state industrial policy made this intention clearer. Since then, with transfer of tribal land for industrial purposes gaining unprecedented magnitude in the state, there has been visible, rampant violation of

PESA that debars any such move without the approval of the concerned gram sabha and other institutions of Tribal Self Rule.

In the past one decade of implementation of PESA, there have been problems and confusions on the ground. Instances of violations of its provisions have been on the increase especially in the states with rich natural resources and high tribal concentration. These natural resources are viewed as central to the economic growth of states and are generally acquired at the cost of the life and livelihoods of tribal communities.

This makes one wonder if the gram sabhas have any power to intervene in subjects where there is a conflict of interest between the state and local communities, and how far-reaching are the powers and rights vested in the gram sabhas under the Act. More so when there is frequent collision between the centre and the state over the powers and rights vested in the revenue and forest departments. Today, both tribal communities and the state apparatus are facing these conflicting situations and problems.

In this backdrop, a study was carried out in selected villages in Raigarh district between 26 and 28 July 2006. The purpose of this investigation was

- to document cases of PESA violations, and
- to provide suggestions to address the violations.

The process followed in this enquiry involved holding a Jan Samvad (dialogue with the public) on the issues in contention and then visiting the villages. Jan Samvad, organized in Raigarh, was attended by over 150 people representing local NGOs, the media, citizen groups and so on. They placed their opinions, experiences and problems before the team.

The PESA Act came into force on 24 December 1996. This Act extends provisions of panchayats to the tribal areas of nine states, namely, Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Maharashtra, Madhya Pradesh, Orissa and Rajasthan, empowering tribal societies to preserve and conserve their traditional rights over natural resources. All the states with scheduled areas within their geographical boundaries were mandated to amend their existing Panchayati Raj acts incorporating provisions of PESA within a year, that is, by 24 December 1997. In accordance with this, the State of Chhattisgarh added new provisions in its Panchayati Raj Act for enabling effective implementation of the PESA Act 1996.

Provisions under PESA include the following.

- Gram sabha at the para, majra and tola levels
- Gram sabha to protect the traditions, beliefs and culture of the tribal communities
- Gram sabha to manage and protect common properties based on their traditional systems of management and protection
- Local disputes to be resolved by the gram sabha
- The administration to seek permission from the gram sabha in case of land acquisition
- Gram sabha to have the rights over minor forest produce; powers to restore land to the tribals; and control over money-lending to tribals, tribal welfare activities by social organizations and local plans and sub-plans for the development of tribal areas and communities
- Gram sabha to have the control over local markets and melas
- Gram sabha to have rights to control the distillation, prohibition and manufacture of liquor
- District panchayats to have rights and powers similar to the district panchayats falling under Sixth Schedule



Cases of Land Grabbing in Raigarh district

The district of Raigarh constitutes 38% of tribal population with more than half of its total area under fifth schedule³. The district is known for its rich forest cover and rivers like Kelo, Kurkut, Mahanadi and Mand. Construction of the dam on Kelo river in 1960s had raised some hope for development among the people in the district only to be thwarted by the conspiracy to sell the river during 1995-96 for industrial use. The district also has high preserve of coal and minerals increasing its potential for industrial growth. In fact, the government of Chhattisgarh is already focusing on vast industrial expansions in the district. The extent of coal mining in Gharghoda tehsil alone in the district is suggestive of the scale of mining taking place in the district.

Name of operating company (patta holder)	Material	Village	Area (in Hectare)	Duration
South Eastern Coal Field Ltd., Raigadh	Coal	Barod	72.043	01.05.1973 to 30.04.2003
Messers Jindal Steel and Power Ltd., Raigadh	Coal	Dogamauha and 8 others	705.556	10.12.1997 to 18.12.2027
Messers Monet Ispat Ltd., Raipur	Coal	Meelupara and others	830.000	07.06.02 to 06.06.2032
Messers Jindal Power Ltd., Raigadh	Coal	Dogamauha and others	964.650	07.10.05 to 06.10.2035
Messers Raipur Alloys and Steel Ltd.	Coal	Karwahi and others	335.736	25.10.05 to 24.10.2035
Messers Jaiswal Niko Ltd., Nagpur	Coal	Kodkel and others	884.846	10.04.06 to 12.04.2026

Source: District Collectorate, Raigarh Chattisgarh

As seen in the table, these coal mines, excepting one, have come after the enactment of PESA act in 1996. Discussions with the gram sabha members in different places across the district and facts from different sources reveal that there have been several cases of violation of PESA Act in these dealings.

One such example can be seen in Singhanpur village in Kharsia tehsil where the administrative and grazing lands have been acquired for industrial purposes going against the objections from the gram sabha. The State Investment Enhancement Board (SEIB) directed the gram sabha of Singhanpur on 21 March 2003 to submit its no objection within two months on acquisition of about 31 ha of agriculture and grazing land. The gram sabha accordingly passed a resolution in the meeting and submitted its objection to the proposed acquisition. However, the notification issued by the sub-divisional officer on this mentioned that the gram sabha in its letter on 23 April 2004 gave its consent to establish a factory on the land. According to Shri Asharam Majhi, the Chairperson of the gram sabha, the gram sabha passed yet another resolution objecting to land acquisition for establishing any factory on that land. The district administration by-passed this decision of the gram sabha and directed the Sub Divisional officer of Kharsia to grant permission to Monet Company to undertake survey on administrative and private land. Subsequently, the Collector of Raigarh issued orders for acquisition of 19.816 ha of land in Singhanpur under section 6 of the Land Acquisition Act. The gram sabha of Singhanpur also made an effort to bring this to the notice of the Chief Justice of Chhattisgarh on the grounds that the village comes within the world heritage site and no activity is permissible which affects the murals in the village. The murals are located at a distance of a mere 500 meters from the Monet plant and are likely to be destroyed through pollution. No amount of application and objections deterred

the administration from going ahead and acquiring 1.453 ha of grazing land in Singhanpur itself for Monet Company. The administration did not even give any information about this through public announcement / notification. There have been more land acquisition to this as the District Trade and Industries Center; Raigarh maintains that 19.186 hectares of private land was acquired in Singhanpur on 11.11.2005. The irony is that the affected farmers have neither received written communication on this nor have they given their consent for the acquisition. The consent of the people is necessary as this falls under the jurisdiction of PESA act where the gram sabha has the ultimate authority to decide about the land use pattern. Despite the land been acquired, beyond legal procedures, the people affected by this have not yet received any compensation.

Similar cases of violations of PESA, notwithstanding the protests and objections by the gram sabhas, are be seen in the villages of Gharghoda tehsil. A brief on 6th March 2006 issued by the collector's office to the District Planning Committee, Raigarh states that angry protests were registered by the villagers of Tamnar, Salihabhata, Godhi, Northern Regaon, Southern Regaon, Kunjemura, Pata and so on of Gharghoda tehsil over a public announcement on acquisition of 29.595 ha of land in these villages for the Jindal Steel and Power Limited. The land marked for acquisition includes the main pathway to the village, religious site, a pond and also nistar land such as cremation ground, cemetery and cowshed. In a written complaint lodged with the station in charge, the villagers have refuted the claim that the Jindal Steel and Power Company had acquired a no objection letter from the gram sabha and complained that the letter was issued by the gram panchayat and the word 'panchayat' was fudged with white ink and changed to 'sabha'. The villagers' demand for action against this unconstitutional and false action by the company is yet to be addressed.

Prior to the acquisition, during the process under Section 4 (1) of the Land Acquisition Act, 1894, after notification, the villagers registered their protest through a number of written complaints and objections. However the Land Acquisition Officer has recorded no information pertaining to action taken on the written complaints of the villagers. Instead the next step in the acquisition process was started. On the objections presented by the villagers and gram sabha, the Collector, Raigarh stated, *"on the subject of 'no objection' by the gram sabha, there is no question as the gram sabha is only consulted in the process and is not required to give a no objection certificate"*. He further added *"where the question of rehabilitation and employment of the affected farmers is concerned it has to be mentioned in the Award Notice. The land acquisition proceedings are being done on the orders of the government and are mandatory in nature. As per the Act and law the objections raised by the villagers and gram sabha cannot be accepted."*

The investigation team found several such cases across the district, where actions and proceedings of land acquisition are not clear. Instances of administrative machinery facilitating the private mining companies to grab land bypassing the provisions of tribal self rule were seen in villages of Rabo, Kalam, Amapali, Dokramuda, Vilaskhar, Harradih, Gadgaon, Charratangar, Dehradhi, Barbhona Pakhadraha Poonjipathra, and Saraipali in Gharghoda tehsil. The violation of PESA act is not only limited to mining areas but also includes several development processes in the fifth schedule area violating peoples' rights to land, water and forest (jal, jangal aur zameen).

A classic case of violations of multiple laws and regulations such as the central water commission regulations, environmental law, laws related to land acquisition and PESA can be seen in case of building a dam on the river Kurkut. As mentioned earlier, villagers had protested against the proposed construction of the dam for Jindal Steel and Power Limited (JSPL) in Gharghoda tehsil on an earlier occasion. When the issue of expanding the dam came to the light, a public hearing was organized on the issue of expansion of JSPL on 30 January 2005. In this hearing, a demand was made from state and central government through 1922 applications and over 42000 signatures to cancel the expansion of the dam for the benefit of the tribals and farmers. Ekta Parishad and Lok Shakti, two organisations working around the issue of protecting the rights of people also filed petitions in National Environmental Appellate Authority. However, the second phase of expansion of JSPL is nearing its completion despite the fact that there has been no decision so far from the national environmental appellate authority.

The indiscriminate transfer of land in the scheduled area of Tamnar village for the construction of a power plant is yet another example of how information is misappropriated. Large scale lands belonging to the tribals of Tamnar were sold on benami terms despite the fact that people of 52 panchayats had unanimously resolved not to give any land for construction of the power plant. Almost all the common property land, to the tune of 2000 acres, is in the direct control of JSPL today. Wastes are dumped over 100 acres of private and common property land. The appropriation is made at different levels including fudging the gram sabha records as well. For example, the resolution no. 14 of Tamnar gram sabha suggests that the no objection certificate was issued in 2003 whereas in the register of the gram sabha the point number 14 is about the Antodaya scheme.

In Raigarh district alone, about 1740 ha of agricultural land has been given for industrial purposes. In most of the instances of land acquisition, not only the provisions of PESA have been violated, but there is a whole host of environmental legislations which have been by-passed.

In its plan for expansion in Saripali, JSPL bypassed some critical environmental norms such as not getting the due environmental clearance and an appropriate environment impact assessment (EIA). The company had started construction at the proposed site even before it received the clearance from the Ministry of Environment and Forests. Succumbing to the pressure from the people and organisations, the company carried out an EIA but all that was an eye wash and the report was skewed. Information about presence of ecologically sensitive habitats such as national parks, biosphere reserves, wildlife sanctuaries, archaeological monuments, health resorts and defence installations within a radius of 25 kms of the site was kept at bay facilitating the process of getting the clearance from the ministry of environment. The mandatory EIA report submitted by the company fails to take into account the health and environmental cost to the people in the area.

As JSPL plans for expansion of its operations in the district, there are questions which need urgent attention. It is not known how much land, private, forest and revenue, has been acquired for the purpose of Jindal Steel Industry's establishment in Raigadh district and what actions have been initiated on the objections and complaints submitted by the local people and gram sabhas of Tamnar, Rabo and other Scheduled areas where 'land acquisition' has taken place. The rehabilitation process and packages are still not clear to the affected people. The company must not be granted permission for expansion till the pending cases against the company are settled.

It is clear that the government is unwilling to clarify the different categories of land allocated to the industries and improper maintenance of documents only helps in strengthening its nexus with the private companies. The government is aware that divulgence of correct information will potentially lead to people demanding their rightful dues and will pose as an obstacle to the manipulations by the government. A trend is set for land acquisition without providing the due constitutional rights to the affected communities. According to a survey done by Ekta Parishad in the year 2004⁴, more than 40,000 acres of land with 60% rich agricultural land was allocated to companies since the formation of the state. And it is a fact all the land acquisition in the state has happened by cheating people with wrong information and false promises.

In the last 3 years, there have been enormous protests by the villagers in the entire state against massive land acquisition in the name of industrial development. There has been tremendous pressure from people and people's organizations to resolve the disputes of land grabbing in the name of industries. The government, giving in to the pressure, declared they would form a Land Dispute Board in November 2004 to resolve the matters. However, this is yet to be implemented. The government's rhetoric can be seen from the grand declaration of distributing uncultivable wasteland for industrial purpose. It is not

understood, however, how the government claims that agricultural lands will not be allocated to the industries when the land dispute board itself is yet to be set up.

With the government taking away every little livelihood resources people have, without providing them compensation due to them, the situation of the people is precarious. This has led to acute poverty placing the “development model” of the state under scrutiny. The stories of regular police firing in villages like Chaurenga, Nagarnar, Raigarh and Sipat are not actually law and order problems but rather a reflection of extreme cases of abject poverty in these areas.

The environment is certainly favourable for investments with subsidies touching approximately Rs. 8500 crores with embedded components like ‘directed incentives’, ‘exemptions/concessions’, ‘incentives’, ‘special package’ and ‘gifts’. In the era of globalization giving substantial subsidies to industries seems to be far easier for the governments than providing the minimum subsidy for agriculture. In addition to this, getting the land for industries, diversifying forest land for mining and getting permissions and licenses from ministries ignoring court judgements and directives, circumventing constitutional guarantees and safeguards and even reducing the height of a dam to protect an industry from submerging have become easy for the government!

These efforts by the government have been vehemently opposed by the people’s movements for long without yielding much result. One of the reasons is the apathy of law enforcers and misdirected law enforcement, which is heavily skewed in favour of the powerful. The efforts by the people’s organisations in the regions have been facing the flak from the government and state agencies whereas the growth of industrial enterprises is on fast track. Even at the stage of litigations people’s organizations face great difficulties as the said matter was to be statutorily disposed of within a limited time but no such thing could take place as the said authority is yet to become fully operational. Therefore the resultant outcome is very damaging, as the industrial houses have simply moved ahead with many expansion projects without having to comply with even basic minimum norms of accountability to the law.



Recommendations

The enquiry into the situation of implementation of PESA act during this study brought forth some glaring evidence of violations with impending danger to the lives and livelihoods of tribal communities. There is a need to develop multi-pronged strategies to address the situation effectively. Some of the recommendations for immediate implementations are outlined below.

- Annexure 13 of the Constitution of India lays down the provisions dealing with traditional and belief based rights. These provisions can be used for the resolution of conflicts in many instances.
- There are a number of judgments (Annexure 3) pertaining to the provisions in Section 237 (2) of Land Revenue Code, 1959. Various administrative actions should be assessed in their context to determine their validity.
- In the villages where nistar land has been acquired for industrial purposes, solutions can be found on the basis of nistar patrak.
- In areas where land transfers have not taken place according to the provisions of Section 237 (2) of the Land Revenue Code, land records in should be amended and the entire process of land allotment should be cancelled.
- Documents and papers emerging from the gram sabha and gram panchayat are official documents. Any tampering or change in these documents is a criminal offence. Therefore such offences must be dealt under the criminal procedure code of India.
- All the lands earlier registered for nistar purpose of a village were declared reserved forest in 1958. The Forest Department has not yet provided any report or record of these lands. Therefore, this is a violation of the Conservation of Forest Act, 1980. An appeal vide no. 202/95 regarding this is pending in the Supreme Court of India.
- The compensation fee for alternative tree plantation has been fixed at the rate of Rs 8 lakh per hectare. Therefore this condition should be applied wherever land has been allotted for an industrial purpose.
- According to Chapter 18 of the Land Revenue Code, village nistar lands are considered 'dakhal rahit bhoomi'. The 'dakhal rahit bhoomi' is also considered reserved forest as per Section 29 of the Indian Forest Act, 1927. This ambiguity regarding the status of 'dakhal rahit bhoomi' is maintained for the last 50 years. This anomaly must be corrected at the earliest.

endnotes

1. This article is based on field enquiry done by Shri P.V. Rajgopal, Shri Subhash Lomte, Shri Balaji Pandey and Shri Ramesh Chandra Sharma in July 2006. Compilation of the findings has been done by Shri Ramesh Chandra Sharma.
2. The sixteen districts include Dantewara, Bastar, Mahasamund, Kawardha, Bilaspur, Kanker, Rajnandgaon, Durg, Dhamtari, Raipur, Janjgirchampa, Korba, Raigarh, Jashpur, Surguja and Koriya.
3. Gharghoda, Lailoonga and Dharamjaigadh tehsils in Raigarh district fall within the Scheduled Areas list while Raigarh and Kharsia are partially within the Scheduled Areas
4. Ansuni Awaz by Ramesh Sharma (unpublished report by Ekta Parishad)



PESA and the Illusions of Tribal Self-Governance

Pradip Prabhu

It is an irony that it took 42 years for an independent India to make 'village' as part of the Constitution despite the fact that overwhelming majority of the population lives in villages. The 73rd Constitutional Amendment, an important landmark in the nation's democratic history, introduced Article 243 providing democratic decentralisation of development and self governance. This brought forth a paradigm in which modern state craft was to be viewed through the looking glass of history and modern praxis of administration was to be tempered in the crucible of tradition. A new chapter in the history of modern India was waiting to be written or re-written¹ and the authors of the new history would be the tribal people of India.

Panchayati Raj being a state subject, Article 243 G required the states to frame laws to endow panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government. These laws had to provide for devolution of powers and responsibilities upon panchayats to prepare and implement plans for economic development and social justice. The 73rd Amendment had taken a tentative step but stopped short of actual empowerment as it entrusted the state governments the responsibility to transfer "powers and authority" to the villagers. But as subsequent events show, the response of the political elites in the states ranged from reluctance to resistance to transfer to the people powers, which were concentrated in the hands of elected representatives. Many states were coerced to introduce changes by withholding central development grants. The changes, however, did not provide for village self governance.



Tribal self governance

By virtue of Article 243 (m), the automatic extension of the 73rd Amendment to the schedule areas was barred. The resistant of clause 243 (m) was rooted in two realities. The first was the tacit recognition of the long history of tribal affirmation of their right of self governance manifested in their prolonged resistance to colonial rule. A classical example being the Wilkinson's Rules which provided recognition for the traditional Munda-Manki system of self governance in the Kolhan region of Jharkhand². The second was the recognition that traditional tribal self-governing institutions were still functional in tribal areas requiring convergence of the 73rd Amendment with ground realities. Article 243 (m), therefore, provided open Constitutional spaces for traditionally self governing tribal communities and the opportunity to provide legal spaces for strengthening self governance as a vehicle of tribal advancement.

Not surprisingly, the requirements of 243 (m) were ignored by state governments, who continued with their Panchayati Raj laws in the Fifth schedule areas in clear violation of the Constitution. The constitutional infringement was not a matter of concern for the Centre, the Governors and or tribal legislators. The unsavoury situation continued till the Gondwana Sangharsh Samiti of Adilabad challenged the validity of Mandal elections in the High Court of Andhra Pradesh. This struck down the applicability of Andhra Pradesh Panchayati Raj Laws in scheduled areas. The challenge put forward by Kashtkari Sanghatna in the Mumbai High Court, the writ filed by the Khut Katti Rayatu Sangha in the Patna High Court and the interim order of the Supreme Court had the same result, application of state Panchayati Raj laws in the scheduled areas was deemed unconstitutional. The judgments created a constitutional vacuum "an unprecedented situation in which formal institutions were unconstitutional and the traditional institutions were still unrecognized by the law".

A select committee of tribal MPs from all states and different shades of political opinion, was constituted under the chairmanship of Dileep Singh Bhuria to suggest ways to harmonise the Fifth, Sixth, Eleventh and Twelfth schedules of the Constitution as they impinged upon the Panchayati Raj institutions and suggest modifications in other Acts to strengthen institutions of local self governance in these areas.

The Bhuria committee came up with path breaking recommendations, which if incorporated in the new law, as subsequently happened, would signal a radical departure from all legislation pre and post independence. The committee, in its radical recommendations which eventually found a place in PESA, re-constructed the character of decentralisation,

pointing out that decentralisation was not complete by transfer of powers to the lowest rung of representative democracy, the gram panchayat. Democratic decentralisation instead, required empowerment of citizens to govern themselves within a frame of participatory democracy.

To ensure that tribal self governance brought within its ambit all tribal people, the committee recommended scheduling of all tribal majority villages. In addition, the committee recommended administrative re-organisation to maintain the integrity of scheduled areas and rectify colonial practices of divide and rule which fragmented geographically contiguous tribal homelands.

In conclusion, the committee recommended constitution of contiguous tribal areas into autonomous districts or sub-districts with councils endowed with legislative, executive and judicial functions, following the pattern of the sixth schedule to ensure that tribal self governance was taken to its logical conclusion.

The chairman in his letter to the prime minister, while presenting the report, eloquently summarised the spirit behind the recommendations saying *'the most important fact of the proposed law is that it will remove the dissonance between tribal tradition of self governance and modern formal institutions, which has been at the root of simmering discontent and occasional confrontations. We are confident that this will mark the beginning of a new era in the history of tribal people. After the new institutional frames become operational, the people will be able to perceive the state apparatus as an extension of their own system in the service of the community, that too, in a crucial phase of modernisation firmly rooted in tradition'*³⁷. Agitations of tribal communities, across the nation, paved the way for the passage of PESA based on the recommendations of the Bhuria Committee.



PESA

PESA was a qualitative leap forward for the 73rd Amendment. Gram sabha (the village assembly) became part of the Constitution. Democratic decentralisation reached its logical conclusion in directly empowering the citizen through participatory democracy.

PESA moved from 'development delivery' to 'empowerment'; from 'implementation' to 'planning'; from 'circumscribed involvement' to 'conscious participation'. PESA constructed tribal self governance around six axes. The first axis through Sec. 4 (b) was a fundamental

departure from colonial praxis and the affirmation that an organic self governing community rather than an administrative unit like a village is the basic unit of self governance; in other words it is the people who decide what a village is and not the bureaucrat.

PESA recognised a habitation to be a natural unit of the community, whose adult members constitute the gram sabha. This traditional institution would function without a formal structure as a unit of direct, participative and consensus driven democracy. The second axis was again a departure from colonial thought and an affirmation that the people and not the state are competent to be seized with all matters concerning their day to day life. In Sec 4 (d) and 4 (m) (ii), the community is declared competent to safeguard and preserve their culture and tradition, exercise command over natural resources, enjoy ownership of minor forest produce and adjudicate their disputes. The third axis seen in Sec 4 (e & f) was also a departure from the thinking of ruling elites which affirmed that common tribals acting through community could decide the path of their development, enjoin the gram panchayat to prepare and implement development plans subject to gram sabha approval and hold the panchayat accountable for management of funds. In Sec. 4 (m) (vi), the village assembly was empowered to monitor all state institutions within its jurisdiction e.g. schools, health centres etc, with the functionaries under its control.

The fourth axis, manifested in Sec. 4 (i), (j), (k) & (l), was a move away from colonial laws like the Land Acquisition Act and Mining Acts, which admitted that communities have right to be consulted on acquisition of or access to land and land based resources. The fifth critical axis underlying Sec 4 (m) was a rejection of the notion of the 'all powerful and all competent state' through the affirmation that the tribal community has the capability and competence to adjudicate on and act in its wisdom to put an end to all exploitative relations including land alienations, money lending, market relations and alcohol. The sixth axis laid down in Sec. 4 (o) was the most critical rejection of the supremacy of the colonial state enjoying a stranglehold on all power leaving its subjects powerless and the establishment of the supremacy of gram sabha, whose power could not be usurped by a superior body. Power usurped from the subjects of the state, was re-transferred to the people. PESA was rewriting a peoples' constitution, keeping democracy alive in the grassroots.



States reluctant to ratify PESA

Notwithstanding PESA's constitutional status and the mandatory compliance required, 5 states with fifth schedule areas were reluctant to amend their Panchayati Raj laws. The

73rd Amendment has already reduced their control and patronage of the ruling elites over sarpanches and panchayat members, PESA threatened to eliminate it. Finally, cosmetic amendments were introduced to give a semblance of compliance under pressure.

The degree of non compliance varies with the states, but the general result is the ineffectiveness of PESA. Madhya Pradesh, which took the initiative to extend PESA to the entire state, effectively neutralised its goodwill by retaining the omnipotence of the state government. Through the aegis of centralised planning, the position of gram sabha is effectively undermined. Other states have circumscribed the powers of the gram sabha with the clause 'as prescribed by the state government', interestingly superseding the Constitution. The Panchayati Raj laws of all the states are not in conformity with the central act as they vary in their application and at times are even contrary to PESA.

It would be inappropriate to say that the states were reluctant to introduce the necessary amendments in their state Panchayati Raj laws to ensure conformity with PESA. What is apparent in an analysis of the various laws passed by the states of Maharashtra, Andhra Pradesh, Madhya Pradesh, Chhattisgarh, Orissa and Jharkhand is an actual de-construction of PESA, through numerous legal contortions, reducing it to a nullity.

PESA is well founded on a 'self governed village community' component, hence it is paramount that the unit of self governance is an actual self governing village community itself and not a unit decided by some civil servant. Participatory democracy, the second component, inheres in the praxis of a face to face self governing community, like two sides of a coin.

But all the states, without exception, have continued with their earlier revenue definitions of village. Thereby the village consists not only of 10-12 scattered hamlets, but several revenue villages are clubbed together to form a gram panchayat. This effectively precludes the functioning of a 'face to face' community as envisaged in central act and eliminates the likelihood of a functioning gram sabha, which could shoulder the responsibilities of a unit of self governance. The law is dead with the manipulation of the definition.

For example, in Kalahandi district in Orissa, the definition of gram sabha, (also called as 'palli sabha'), which conforms to the definition laid down in PESA, is being subverted by the officials to push through a project with the backing of the state government against the interests of the tribals. State modifications in their acts have made the provisions impotent.

PESA recognises that tribal communities depend on village commons and forests, which

they consider their common property resource (CPR). Access to CPRs is linked to survival and livelihoods of tribal communities, the basis of their (anna-aasraa-aarogyaa) food shelter and health security, a buffer against income fluctuations, crop failure and water shortage. Traditional ownership of CPRs in tribal areas was collective while access was regulated by customary or 'unwritten law', which found no place under British law. But in the last 60 years of independence, no efforts have been made to reverse these colonial laws based on the principle of 'res nullius'. On the contrary, the principle has been further strengthened in legislations pertaining to CPRs. Government of India survey report defines CPRs as "resources which are accessible to and collectively owned/held/managed by an identifiable community and on which no individual has exclusive property rights". However, the definition itself is in conflict with the legal frame as CPRs are recorded as government lands without community titles. As a result, CPRs, particularly village commons, forest and water, are the locus of conflict between people and government, on the question of ownership and access, a conflict, which has resulted in their degradation.

The National Water Policy of 2002, under the guise of management, commodifies water and envisages private sector ownership. Several states have formed parallel bodies like Van Suraksha Samiti (VSS)⁴, water user associations, which subvert the gram sabhas. So, while PESA provides the opportunity for government to move away from 'eminent domain' to constructive 'trusteeship', state governments still enjoy the colonial legal frame.

Resolution of disputes among members of the community is a critical facet of governance. Living in their isolated ways, tribal societies evolved a fairly sophisticated society, wherein relations were based on internal solidarity and community cohesiveness. Dispute resolution mechanisms, which evolved organically were based on honesty, admission of guilt, restoring harmony, and consolidating internal solidarity and geared to integrating disputants back into community rather than merely punishing the wrong doer.

However, these traditional systems have come under attack from an aggressive, adversarial system of jurisprudence, which was put in place by the colonial administration. Although PESA accords due priority to traditions and customs, not a single state has adopted PESA. On the contrary, all states without exception have failed to respect legitimate legal traditions. In the absence of state respect of traditional systems, even when they do not conform to the adversarial system of present day jurisprudence, and the continual efforts of dominant elites to undermine them, tribal judicial systems are under threat.

While Sec. 4 (e) and (f) and sec 4 (m) (vii) of PESA empower the community to take charge of development and integrate progress in their culture and heritage, they also ensure that planning is geared to meet felt needs, programmes reach the real beneficiaries, the process

remains transparent and accountable.

Ground realities are quite on the contrary as empowerment remains on paper, gram sabhas have no role to play and are provided no guidelines/principles to assist them in functioning. Neither official functionaries nor people have any knowledge of social audit, a deterrent to public assertion in the gram sabha. Vigilance committees formed by gram sabhas remain defunct with the elected and official functionaries do not recognise the authority of the gram sabhas. The strength of social audit depends on public participation and open display of information, both of which are sadly missing. The hope that the infusion of participation and transparency would uproot corruption, nepotism and diminish contractor driven development lies shattered as state governments refuse to put rules in place. The reasons are evident. In a system where development priorities are driven by patronage, political agendas and contractor interests, PESA has no place.

State sponsored tribal land alienation for mining; dams and industry have displaced over 10 million tribals to date. 'Public interest' has undermined 'peoples' survival'. Hence, Sec. 4 (i) of PESA provides a window of opportunity for tribal communities to be taken in confidence as the barest minimum. The reality is exactly the opposite. Government orders mandating consultation have not reached the field units, Panchayati Raj departments play a minimal role in ensuring compliance and despite safeguards put in place by PESA, rights of the villagers are being violated with impunity.

The gross failure of state governments prompted the MoRD, GoI to issue executive orders describing the process of consultation for the purpose of land acquisition and requirement of letter of consent in the form of gram sabha resolution and when consent is withheld, made it duty of the Collector to call for a tripartite meeting to resolve the issue. However, the guidelines have no teeth even when the villagers voice their opposition in the consultation process, the final authority remains with the DC to overrule the opposition, a power that emanates from the colonial concept of eminent domain.

What are observed are adversarial relations between the officials and the villagers, with the state considering the demands and protests of the villagers to be a nuisance and in some cases even anti-social. It is critical that the observations of the Supreme Court in 'Samata v State of Andhra Pradesh'⁵ calling for a fundamental change in considering the tribals as shareholders rather than stakeholders which could become the basis of the resolution of this ticklish problem is not even considered.

Unfortunately, most of the governments are ignorant of the observations of the Samata judgment or follow them in the spirit in which they are formulated. PESA directly confers

ownership on MFP to the gram sabha u/s 4 (m) (ii), but with the large appreciation in value and importance of forest produce in the national economy, states have been nationalizing and commercializing operations for optimizing the revenue of the state. And the state administration has also made adequate efforts to ensure that the rights granted by PESA are effectively scuttled. Officials and functionaries are not aware of ownership right of gram sabha over MFP. They say no orders have been issued and where circulars were issued to the Collectors, for example in Madhya Pradesh, they have remained collecting dust on the table for the last five years.

By dubious amendments, states have retained monopoly of valuable produce like bamboo, tendu or musli. Monopolistic trade in MFP is heavily skewed in favour of private trading houses, individual traders and corporate houses at the cost of poor tribals and forest dwelling communities. Most states have specifically excluded National Parks, Sanctuaries and Reserve Forests etc. from the purview of this provision even when these are contiguous to the village boundary and are traditionally accessed as CPRs. Gram sabha ownership rights are not based on real assessment of needs but administrative classifications. As the issue is closely linked to the issue of forest management and requires amendment of existing Forest Acts and Rules, gram sabha ownership of MFP remains a mirage.

On the contrary, what is observed uniformly in all the areas is that the forest administration does not assist or cooperate with MFP collectors and usually harass them. The tribals are mere paid workers where exists an employer-employee relationship in this field. No wonder the 10th Five Year Plan at para 4.2.84 speaks of a special training programme to sensitise the staff of the forest department for the benefit of the tribals.⁶

Land is life for the tribal communities; it forms the basis of their identity as they understand themselves as people who belong to the land. Hence, land alienation can not be simply equated to loss of property. Its impact goes far deeper as loss of land means being uprooted from one's locus of belonging and a loss of identity. India has a sordid history when it comes to protection of the tribal communities from the scourge of land alienation.

Land laws have failed to stop tribal alienation following massive incursion of non-tribals into tribal areas. Estimates suggest that 48% of the total land in scheduled districts in the country is in possession of non tribals, while thousands of cases are pending disposal for decades. Realising that the tribal would never be able to protect their lands and homelands by relying on the implementation of the laws by the administration or the courts, given their hitherto unsavoury history and accepting that in a system of jurisprudence based on documentary evidence and run on adversarial principles the tribal would never be able to their rights, PESA took a radical step of conferring the right of identifying 'tribal alienation'

where it takes place and with whom it takes place and the responsibility to taken action to remedy the wrong at the place where the land lies and in the interests of justice.

However, no state has taken any concrete legal step with the exception of Madhya Pradesh where the Land Revenue Code incorporates the provisions of the PESA, *'if a gram sabha in the scheduled areas finds that any person other than the members of an aboriginal tribe is in possession of any land of a bhumiswamy belonging to any aboriginal tribe without any lawful authority, it shall restore the possession of such land to whom it originally belonged and if that person is dead, to his legal heirs ' and ' provided that the gram sabha fails to restore the possession of such land, it shall refer the matter to the sub-divisional officer who shall restore the position of such land within three months from the date of reference'*⁷. The question remains whether other states are willing to do the same.



Laws remain on paper

What is apparent is the disregard of the state legislatures to put the critical components of PESA in place during the passage of conformity legislations. If the serious inconsistencies in the PESA Act and the Panchayati Raj legislations in the states are bad, worse still is the fact that even the limited state laws remain on paper in the absence of rules and guidelines. This is because of the typical legal methodology that requires assigning powers to the gram sabha or panchayats at the appropriate level and making it subject to passing the state rules in that regard. With the exception of Madhya Pradesh where some rules are in place, no rules have been made nor have any prescribed orders/guidelines been issued by the respective states to operationalise the law on the ground.

The tacit refusal of the states to formulate the necessary rules and required procedures, which would thereby permit the implementation of the state conformity acts, appears to have gone unnoticed by the centre, the governors of the states, Tribes Advisory Councils and the tribal legislators. It would be inaccurate to say that the lack of knowledge of a constitutional obligation has gone unnoticed, as tribal organisations in these states have raised the issue time and again. But the wilful delay in framing the rules, which have affected implementation and rendered gram sabhas and gram panchayats dysfunctional, is nothing short of a criminal act.



Feigned ignorance of the state

Our enquiries in various tribal areas show that about 99% of the members of the gram sabha and the elected representatives of PRIs and about 90% of the official functionaries working at the village and block levels have said that they are not aware of PESA or the state conformity Acts and their provisions. While comprehensive training on panchayati raj is undertaken at numerous state Panchayati Raj training institutions, there is absolutely no focus on PESA and obviously the trainers don't understand PESA's provisions. There is no clearly thought out strategy to implement any awareness programme by the Government.

People and their representatives are more confused by half-hearted efforts made by the officials as state governments have not made any specific efforts to educate the people about the provisions of the Acts which aim at giving specific protection to the economic and political rights of tribal people in the Scheduled Areas and their traditional and cultural practices. There is blindness and feigned blindness, while the former calls for sympathy, the latter is nothing but criminal.



The future is ours

PESA is the first law, which is grounded in the principle of participatory democracy at the basic unit of governance namely the gram sabha. Hence, PESA is unambiguous that 'empowerment of the gram sabha' is its primary focus and stands on a different footing from the empowerment of gram panchayat.

State lawmakers and even tribal representatives, however, argue that real devolution of powers to the people within the present framework of PESA is not possible as the people are not capable of governing themselves; a frightening scenario given the fact that PESA is the first attempt by the Constitution to create a frame for participatory democracy, justifiably the real form of democracy.

Whether it is the lack of commitment of governments, its legislators and its functionaries to democracy itself or to real empowerment of the tribal poor so that they can take actionable steps to protect their homelands, culture, ethos and their lives themselves or something

else, only history will tell. But the present scenario points out to one undisputable fact - that the opportunity to ensure that 8 million tribal people will have a humane and humanised future may never come again. PESA, whether it is perceived in that manner or not, is in effect a critical step towards de- colonization. That perhaps explains the resistance of the ruling elites to have it implemented in letter and spirit. It is no accident of history that the struggle against colonialism began with the tribal people. Perhaps the struggle against internal colonization of their homelands and neo colonialism will take root in their struggles for a just future. Tribal self governance remains their ideal and their weapon. They reach out for solidarity from every committed citizen. The challenge is to act now.

endnotes

1. Sharma, B.D. Self Rule Laws: Madhya Pradesh, Sahyog Pustak Kutir, New Delhi 1998.
2. After series of tribal uprising during colonial rule, the most significant arrangements that colonial administration made in the Chota Nagpur area was the Wilkinson's Rules, by which the administration withdrew and left the day to day administration to the Mundas and Mankis.
3. Sri Dileep Singh Bhuria in his letter to the PM, quoted in Sharma B D ' Whither Tribal Areas: Constitutional Amendments and After ' ,Sahyog Pustak Kutir, New Delhi, 1995, Page 8
4. Van Suraksha Samiti (VSS) has been created under the Joint Forest Management (JFM) Project in 1992.
5. 'Samata v. State of Andhra Pradesh' AIR 1997 SC 3297
6. 10th Five Year Plan (2002-2007), Volume II, Sectoral Policies and Programmes, Planning Commission, New Delhi, Page 468.
7. Madhya Pradesh Land Revenue Code under section 170 (b) (2)



PESA - contradictions and dilemmas

Ratnaker Bhengra

The provisions of the PESA were enacted bearing in mind the Scheduled Areas referred to in Article 244(1) of the Constitution of India. This was intended to essentially protect and promote the rights, interests and concerns of the Scheduled Tribes, popularly referred to as the adivasis.

The Fifth Schedule suggests that the Governor and the Tribes Advisory Council is to protect / promote the welfare and advancement of the Scheduled Tribes.

In PESA, there are certain mandatory directions regarding the Panchayats in the Scheduled Areas. They are as follows:

1. "a state legislation on the Panchayats that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources" PESA Section 4(a);
2. "a village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs" PESA Section 4(b);
3. "every gram sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolutions" PESA Section 4(d);

If one was to carefully read the above mentioned provisions of Section 4 of PESA, the inescapable and appropriate conclusion is the recognition, empowerment and promotion

of the social, economic, cultural and political way of life of the Scheduled Tribes or the adivasis in the Fifth Scheduled Areas. Since the PESA mentions the panchayat in its title and in a couple of sections as well, it basically talks about the 'village', 'gram sabha', 'institutions of self governance' and deals with politics in the bulk of the landscape of the Fifth Schedule Areas including the suburban and rural areas. It follows that the correct or harmonious interpretation of PESA would be the recognition of the traditional tribal political institutions of self governance. Such a conclusion also follows since the PESA must be read in conjunction with the Fifth Schedule, which deals with the Scheduled Tribes of the Fifth Schedule Areas and given the fact that PESA has as its backdrop the recommendations of the Bhuria Committee, which was instrumental in formulating the PESA.

PESA also has certain ideas and concepts that do not necessarily have to do with the customary, the traditional, and the protection of cultural identity of the Scheduled Tribes. For instance, PESA Section 4(c) states, "every village shall have a gram sabha consisting of persons whose names are included in the electoral rolls for the Panchayats at the village level." Gram sabha described here would mean village assembly, a very common or almost universal political characteristic of adivasi communities all over India possibly limiting the diverse nature of language used in tribal communities. Further, "electoral rolls for the Panchayat at the village level" is not the customary or traditional criteria for the village assembly to take place or occur. So, the supposition or imposition is the western idea of universal adult franchise, implying an inferior viewing, prejudice or contempt of the procedures or processes that the adivasis may have, for choosing their leaders or chieftains, or the unknown or ignorant fear that their procedures or processes may not be fair or democratic enough. The usage of the word Panchayat itself may be so because of a lack of a better or more comprehensive word. The word itself is not customary or traditional to most adivasi communities and thus, the usage should be more in the manner of a functional or utilitarian way, rather in an absolute, definitive way.

The origin or root of this definition of gram sabha comes from Part IX of the Constitution, i.e. Article 243. According to Article 243 of the Constitution of India "gram sabha means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level." The Jharkhand Panchayati Raj Act, in Section 1(iv) more or less abides by this electoral definition of gram sabha. This definition, of course, ignored the fact that tribal communities have had their own bodies and institutions much before the invasion of the Aryans, let alone before the Constitution was drafted. Such Acts are rooted in a sense of prejudice and superiority which hold the tribal institutions to be inappropriate or at the minimum paternalistic.

In the last twenty five years, with the emergence of tribal self rule, the indigenous voices

against marginalisation of tribal communities and assertion of rights have found a new meaning. However, in the United Nations and other global outfits, such marginalisation of tribal or indigenous bodies or institutions, and imposition of other institutions, is increasingly viewed as a racist act. Racism is certainly far more serious and affecting probably about 100 million tribals in India, leading to severe discrimination. The racism against the tribal communities needs to be highlighted. It is hoped that this definition and usage of panchayats will be replaced by Parliament at least for the Fifth Schedule Areas (the understanding being that in the Sixth Schedule Areas, the traditional tribal village assemblies are existing, recognised and protected, so why not here?), and the racism corrected. While the PESA sought to rectify this, its simultaneous mentioning of typical Constitutional schemes as well as 'custom', 'traditions', 'cultural identity' will lead to confusion, typical bureaucratic intransigence; and prejudice in officialdom. This is likely to disprivilege a pro-tribal understanding and interpretation. The correct method would be to genuinely lay the emphasis on the 'customs', 'traditions', 'cultural identity' etc. of the tribals and then try to harmonise, electoral rolls/seats/reservation of posts etc. It is important to always bear in mind the Fifth Schedule's 'welfare and advancement' of the Scheduled Tribes and that, the adivasis have for ages been ousted, outraged and oppressed in this country, and that, they should be given the right to develop through their own genius. The Samata judgement, which is very protective of Fifth Scheduled Areas, definitely calls for protecting the 'seats' and 'posts' of Scheduled Tribes, but bearing in mind Section 4 of PESA, it would be more appropriate to view them in consonance with their traditions and customs.

The recently enacted 'Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006' has presented a different version of the definition of gram sabha. In Section 2(g) "gram sabha means a village assembly which shall consist of all adult members of a village, and in case of states having no Panchayats, Padas, Tolas and other traditional village institutions and elected village committees, with full and unrestricted participation of women." This, different and removed from the electoral listing, mentions participation of women and also lays down that in states having no panchayats, basically indicating the North East, the traditional village institution will suffice for the village assembly. It seems like the benefit of village institutions in the North East is recognised only after 60 years of Independence! This is probably because of the history of legal treatment, and also because dominant caste communities live in juxtaposition to adivasi communities in the Fifth Schedule areas. Hence, caste interests are better defended by disregarding any attempt to recognise and strengthen adivasi customs, traditions and cultural identity and so on. Defending caste institutions to the detriment of adivasi institutions is no doubt discriminatory. The definition in Section 2(g) in the new legislation establishes the fact that a different definition can be used for different areas considering the diverse context in which forest dwellers live in this country.

It is a fact that, the Jharkhand Panchayat Raj Act 2001 was an act and a mistake that was bound to happen. Its entire soul is the 'Panchayat' flowing from Part IX, Article 243. It is basically, a typical Panchayati Raj Act, with the three tiers, with a more or less absolute jettisoning, of 'customs', 'traditions', 'cultural identity' etc. Yes, it does mention (in Hindi, since the Act is in Hindi) in Section 8 (iii), that in Scheduled Areas, a session of the gram sabha will be presided/ chaired by a member who is not a Mukhya (head), or Up-Mukhya (deputy-head), or member, and who is according to the customs/ traditions of that area recognized as an important person, or Manjhi, Munda, Pahan, Mahto, or known by any other name, or one, who is chosen unanimously by the people present. In fact, this is the only and most comprehensive reference to customs/traditions and traditional officials such as Manjhi, Munda etc in the whole of the Jharkhand Panchayat Raj Act 2001. Traditional tribal recognised official posts that existed long before the Constitution, long before most other non tribal persons and communities came to the area and started dominating the social, economic and political spaces; have simply been reduced to a presiding role. If this is not considered a politically racist state of affairs, then it is indeed difficult to hope for any redressal of the problem. It is both exasperating and tragic, and yet understandable, that this has so transpired under the eyes and ears of many tribal MLAs and three tribal Chief Ministers of Jharkhand.

Another provision in Section 4 (g) of the PESA seeks to address the Constitutional scheme of empowerment through reservation of seats in Panchayats. "The reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population of the communities in the Panchayat for whom reservation is sought to be given under part IX of the Constitution:

- provided that the reservation for the Scheduled Tribes shall not be less than one half of the total number of seats;
- provided further that all seats of chairpersons of Panchayats at all levels shall be reserved for the Scheduled Tribes."

It is really a mystery how this secures the customs, traditions and cultural identity of the Scheduled Tribes, particularly their social or political, while imposing the Constitutional scenario as against the tribals' own forms of traditional self governance, even in areas where they still exist or can even be revived.

The notion of 'seats' is an imposed concept and definitely not customary nor traditional, further these 'seats' must be in proportion to the population of the communities in the

Panchayat for whom reservation is sought to be given under part IX of the Constitution. This scheme of governance is not customary or traditional, and neither does it protect their traditional social, political and institutional identity. Normally, a tribal village in a Scheduled Area is one that has come down through the ages, and it is 'governed', even though in a rather rudimentary manner by their own institutions. For instance in Jharkhand, the adivasis of this area have always been self determining their own lives by their own social and political institutions. The tribes here function at the 'hatu', 'aatu', 'padda', 'podda' or village level by or through their own village assemblies or the 'hatu dunub', 'aatu dunub', 'padda sabha' and 'podda sabha'.

It would have been better and politically just, if for example, the 'Munda' or 'Mahto' or 'Manjhi' or 'Kartaha' are legally recognised in the respective villages where these tribal nomenclature is in use. Being of tribal vintage and usage and essentially tribal, no one should grudge them this, it would be easier to argue to reserve these posts for tribals since the tribal way of life is recognized, protected and promoted. However, what was done instead, was that in pursuance of Article 243 of the Constitution, and in pursuance of PESA, the 'Mukhiya', 'Pramukh' and 'Adhyaksh' were instituted for the three tier level with 100% reservation of these posts for the Scheduled Tribes. As a result, the matter landed up in the Jharkhand High Court and is now pending in the Supreme Court, where the Hon'ble Judges are bound to decide the matter by the existing law of the land. On the other hand, if it was the tribal's own self governing bodies and their traditional offices or heads/chiefs recognised and reserved for them, then it would and should not be grudged to them.

Many from the dominant society do not aspire for tribal chieftainship. There are tribal headmen and chiefs in states in the North East and such posts are held by the tribals of the locality /region themselves. Even in the USA, there is a law that recognises 'tribal' to settler relations as 'government to government'. There, in the spaces reserved for them, the indigenous people prefer to wear their own head dresses. They do not aspire to wear the hat of Uncle Sam, as it would equally be absurd if the white man were to aspire after the indigenous head dress. The question is why then, in this country, there is an attempt to force upon the tribals a Panchayati Raj killing the soul and eliminating the tribal communities as upright, self reliant and dignified peoples.

Under PESA, the traditional self governing institutions of the adivasis should be recognised as they are called in their indigenous languages or the local languages they may use. Use of the tribal or adivasi language is an important recognition of their cultural identity. It would be hypocritical not to recognise the rich indigenous socio-political institutions and paying lip service to the words provided in the Act.

The tribes also have their own village heads, such as the 'Munda', 'Mahto', 'Manjhi', or 'Kartaha.' The usage of the term 'Mukhiya', historically an alien imposition, was accepted due to official patronage. The Ho adivasis, also have a 'jodidar Munda', a term which conveys parity and goes well with the customs, traditions, ethos and values of the adivasis though it is lower in hierarchy. It is definitely far appropriate and better than the hierarchical Up-Mukhiya (deputy head) imposition, of the hierarchical Aryan caste structure. By extension, we have 'jodidar Mahto', 'jodidar Manjhi', and 'jodidar Kartaha' for other tribes.

It is tragic that PESA, (a reasonably acceptable law for adivasis), which could have been given a definitive and positive thrust by the adivasi MLA and MP leadership, along with the NGOs and the adivasis themselves in recognising and furthering their own self governing institutions of the adivasis, has not been used for this purpose. Part of the reason is because, in subservience to the western notion of adult franchise, the electoral list and seats are adhered to as primary and then in contradiction, customs and traditions are mentioned. Since the dominant political mindset, culture and clout is of the caste society, the adivasi institutions are not understood, empathised with and therefore marginalised.

It may be useful to blend the Constitutional scheme with the customs, traditions and cultural identity of the tribals and many more examples of areas where this could be done so can be cited. Section 7 of the JPRA, deals with the quorum for a session of the gram sabha. Section 7(l) states that for any session of the gram sabha the quorum will be consist of attendance by 10% of the members, of which 33% will be women, but in the Scheduled Areas, the quorum will be constituted by 33% of the members of which at least 33% will be women. It is hoped that this low percentage is not an explicit Constitutional mandate.

This low quorum criteria is a sad commentary on our democracy or the standards we aspire to achieve. Even in Jharkhand no political leader, whether independent or from any of the parties, has raised this. This demonstrates their political will and democratic conscience. It is ridiculously low for the general areas, and such a low attendance can easily be manipulated or manufactured. In a country like India with its history of caste/community interests, it is easy to imagine the ensuing scenario.

For the Scheduled Areas, it is pegged at 33%, but it is nowhere near the kind of quorum that typical meetings in a tribal village in Jharkhand witness. Theoretically, it is understood as 100%, with the understanding that one person from each family will attend. Usually, 70–85 % attendance is considered normal. There have been instances where a meeting called to discuss a particular land dispute was postponed thrice despite having more than 50% attendance so as to increase the quorum to at least 75 %. Thus, when the tribals already have a very high democratic standard for quorum, it is disastrous to impose ridiculously low

quorum percentages. It would be good to continue with the good practice of the tribals, and keep their quorum percentage rather high. This will ensure more accountability and respect for decisions. Even for general areas, the quorum should at least be raised to 51% so as to ensure effective democratic functioning.



In solidarity as struggles continue ...

*We should re-create the situation
as it way before when we lived in freedom.*

*The forests, lands and animals
and our total trust in them
was the very basis of our existence then.*

*Our lives depended on these -
and not on the things like electricity,
government development programmes,
employment and other modernities.*

*We were then born free
and lived in freedom in our naadu [homeland]
of forests, lands, animals and free people.*

*Just like the hunter hunting the animals,
we - the free people - are hunted by the state.
The state took away and continues to take away
our naadu to hand it over to >others<
who know nothing at all about our naadu and its nature.*

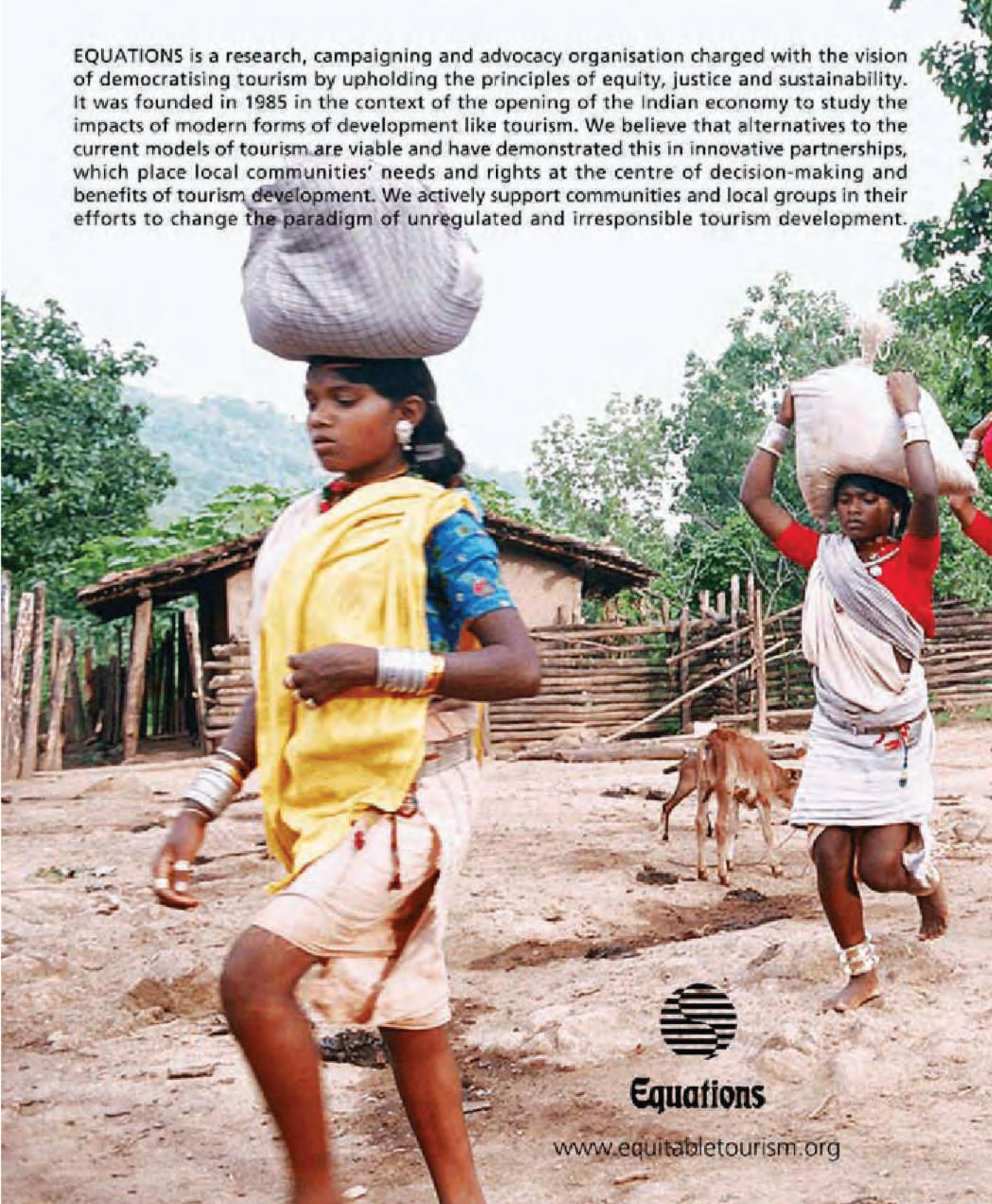
*This is our homeland.
Our homeland belongs to our people.
There was no need to prove this
with a legal title of ownership of the lands,
and it was not challenged then.
That this is our homeland
was acknowledged then.*

*But it was the government who insisted
on having titles of ownership of land.
And that, too, in the name of individuals.
The government took away for themselves
the largest part of our naadu.
It was the introduction of private property
which is destroying us, and not anything else.
Ask anyone else to stay in the forest and live.
Let us see whether they can.
They cannot, because they are ignorant people.
They know nothing about our naadu.
Even these scientists are ignorant people.
Where do they learn about the forests
and the living beings inside?
Only from us. Yet these scientists
still do not know as much as we do.*

*When WE dance and request our deity
to bring rain, the rain comes.
YOU cannot do this.*

Boddan, an activist for tribal land rights in Tamil Nadu and Kerala,
resident of Thuvaipathy village, Coimbatore District, Tamil Nadu

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